Response to Comments

Industrial Stormwater General Permit

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Response to Comment

Industrial Stormwater General Permit

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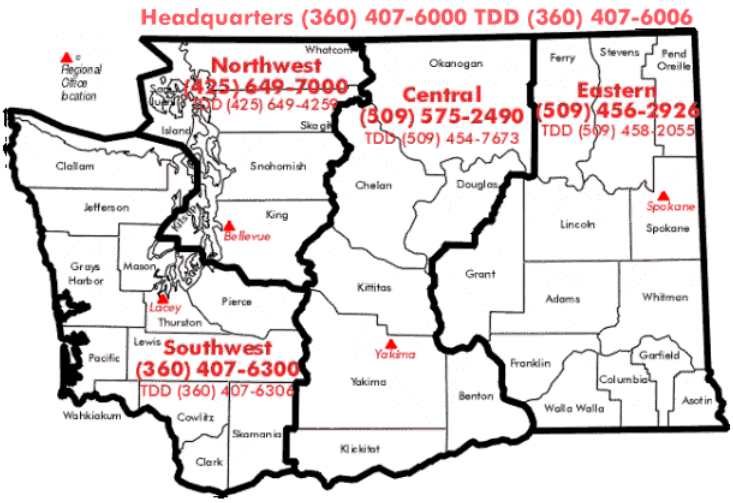

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Response to Comments
Industrial Stormwater General Permit

The Department of Ecology (Ecology) received public comments and testimony from over 50 organizations and individuals. The draft permit was revised in response to those comments. Most changes were edits to correct minor errors or to provide greater clarity. The overall direction and intent of the revised permit have not changed but there were changes to enhance the effectiveness and applicability of the permit. Because of the number of comments, responses will be provided for the issues identified by the comments, rather than respond to individual comments. Each issue will identify, by number, the parties that contributed comments.

The Response to Comments is divided into five parts.

1. Introduction
2. Permit Changes
3. Ecology's Responses
4. Numbered Listing of Commenters
5. Text of Comments

Introduction

Stormwater has been identified as a major contributor of pollutants to waters of the state. There are many possible sources including residential and agriculture as well as industrial sources. This permit is intended to better define the amount of pollutants from stormwater discharges associated with industrial activities and focus attention on those sites that are most likely to be causing or contributing to a water quality violation.

There were many comments about the additional cost and burden that will result from the new permit requirements, primarily stormwater sampling, analysis, and reporting. Additional comments pointed to Ecology's shortage of staff and the lack of permit required evaluation and oversight by Ecology. Ecology recognizes the merit of these concerns but believes the permit does reflect a balance of permit requirements that will provide for protection of the state's waters. Ecology believes there will be adequate oversight and evaluation because monitoring is designed to focus Ecology's effort where it is most needed.

The most significant change from the previous permit is the inclusion of stormwater sampling, analysis, and reporting. The purpose of this monitoring is to provide an indication of the water quality in stormwater discharges from each permitted facility and for industrial stormwater in general. A limited set of indicator pollutant parameters was chosen as the most cost effective way to provide this basic information on quality of stormwater. The intent is to provide a feedback loop so that attention can be focused where it is most needed.

The permit applies benchmark values as a means to identify potential environmental risk. Monitoring results at or below benchmark values are considered to have little environmental risk. Monitoring results that exceed benchmark values raise concerns. This approach provides quick feedback for the Permittee and is expected to lead to greater attention to stormwater management at a site when benchmarks are exceeded. Ecology can also best apply staff resources by focusing on sites where monitoring suggests problems may exist. Monitoring will also provide the data that is necessary to take a more holistic approach to evaluating the successes and failures of stormwater management and allow greater precision in developing permit requirements in the future.

The inclusion of this monitoring was pivotal to many of the other decisions on permit requirements. There are almost 1300 Permittees with coverage under the industrial stormwater general permit and across the board requirements do not distinguish between those Permittees doing a good job and those that are not. Permit requirements that result in an evaluation or processing for every Permittee become a major commitment of Ecology's time, without benefit to environmental protection. Therefore the permit does not require the submission of all reports or evaluation of all plans. Instead, the permit provides for additional Ecology review or additional Permittee reporting on a case-by-case basis. Ecology has committed to tracking all monitoring data from stormwater sampling and analysis. Data review will be a significant part of deciding how Ecology will focus attention of specific facilities. As in the past, public concerns and complaints about specific facilities will also focus Ecology resources. Data review and public complaints in combination with site inspections by Ecology staff provide the basis for permit discretionary actions at a level that is environmentally protective but within available resources.

There were many concerns about enforcing the permit. While the permit sets the requirements that the Permittee must achieve it does not dictate enforcement actions. Enforcement actions are determined by Ecology staff responsible for field inspections of facilities and enforcement staff. Ecology recognizes that technical assistance and enforcement actions are critical to permit success. Ecology is developing technical assistance tools to help implement monitoring and will develop an enforcement strategy for this permit. The enforcement strategy includes site technical assistance, informal notification, and formal enforcement actions. Because of the importance of stormwater sampling to the success of this permit, failure to monitor will certainly lead to escalating actions by Ecology.

Changes to the Final Draft Permit

The following portions of the permit have been changed.

Permit Coverage

S1.B.1. – Revised

S1.D. – Revised

S1D.2. – Deleted

S1.F. – Revised

Coverage Requirements

S2.B.1 – Revised

S2.B.2 – Revised

S2.B.3 – Revised

S2.B.5. – Revised

S2.B.6. – Added

S2.C.1. – Added

S2.E.1. – Revised

S2.E.3. – Added

Discharge Limitations

S3.B.1. – Revised

S3.D. – Revised

S3.E. – Revised

S3.E.1.c. – Added

S3.E.4. – Added

S3.F.1. – Revised

Monitoring Requirements

S4. – Revised

S4.A. – Added

S4.B. – Added

S4.C. – Revised, was S4.A.

S4.C.1. – Revised

S4.C.2. – Revised

S4.C.3. – Revised

S4.D. – Revised, was S4.B.

S4.D.2. – Revised

S4.D.3. – Revised

S4.D.4. – Revised

S4.E. – Revised, was S4.C.

S4.F. – Revised, was S4.D.

S4.F.1. – Revised

S4.F.2. – Added

S4.G. – Added

S4.H. – Revised, was S4.E.

Reporting and Recordkeeping Requirements

S5.A. – Revised

S5.B. – Revised

S5.E. – Revised

Conditional "No Exposure" Certificate

S6. – Revised

S6.C. – Revised

S6.D. – Revised

Compliance With Standards

S7.A. – Added

S7.B. – Revised, was S7.A.

Previous S7.B. – Deleted

S7.C. – Added

Previous S7.C. – Deleted

S7.D. – Added

Operation and Maintenance

S8.A. – Revised

S8.A.1. – Added

Stormwater Pollution Prevention Plan

S9.A. – Revised

S9.A.4.b. – Added

S9.B.1. – Revised

S9.B.1.c.viii – Added

S9.B.2. – Revised

S9.B.3. – Revised

S9.B.3.a.vi – Revised

S9.B.4. – Revised

S9.B.5. – Revised

Solid and Liquid Waste Disposal

S10. – No Change

Notice of Termination

S11. – Revised, divided into A and B

S11.A. Revised

S11.A.3. – Added

S11.A.4. – Added

S11.B. – Added

Determination of Primary Activity

S12. – No Change

Dispute Resolution

S13. – Added

Reduced Production for Compliance

G3. – Deleted

Permit Coverage Revoked

G4.C. – Deleted, was G5.C.

G4.H. – Deleted, was G5.H.

Definitions

AKART – Added

Design Storm – Revised

Design Storm Volume – Added

Design Flow Rate – Added

Discharge Target – Deleted

Existing Facility – Revised

Regular Business Hours – Added

Stormwater Discharge Associated with Industrial Activity – Added

Stormwater Management Manual – Revised, was Stormwater Management Manual for the Puget Sound Basin

Treatment BMPs - Revised

Comments and Responses

Comments have been grouped by issues. Each "Issue" is phrased to capture the intent of similar comments. The numbers in parentheses list those that contributed comments captured by the issue. The numbers refer to the table below that lists all those that provided comments or testimony. Each issue is paired with an Ecology "Response". The issues are grouped by the part of the permit they refer to (e.g. general comments, S1 – Permit Coverage, etc.)

General

Issue: The permit raises the cost of doing business and is too great a burden for industry to bear. This is primarily a result of the new sampling requirements and protocol **(3, 7, 18, 19, 31)**.

When the government makes new requirements, the government should pay the cost of complying with the requirements. **(12, 48)**.

Response: Ecology recognizes that the new sampling and monitoring requirements do have an associated cost. However, the cost is justified because there must be some tangible evidence of how sites are doing. Ecology has made every effort to minimize this impact and still provide information feedback necessary for both the Permittee and Ecology to best focus stormwater management efforts. Ecology will provide workshop opportunities and a sampling guidance document to help Permittees achieve compliance. Although cost is part of the consideration in developing permit requirements, the regulations do not include state funding for Permittees to come into compliance.

Issue: Facilities that operate without a permit, including illegal operations, have an unfair economic advantage. They also typically have no environmental ethics. Ecology should take enforcement actions against those that operate without permits. Complying with state regulations should be a competitive advantage not a disadvantage. **(3, 4, 6, 19)**

Response: Ecology agrees that there should be a level playing field and compliance with regulations should be less expensive than noncompliance.

While the permit defines compliance it does not dictate when enforcement actions will be taken. Enforcement actions are determined based on staff resources and risk to the environment. Ecology has taken actions to bring facilities into the permit as they are identified. Ecology can take enforcement actions against unpermitted facilities. Ecology is developing a strategy for the most effective ways to enforce the permit provisions. The issue of unpermitted facilities will be considered and suggestions for a well focused enforcement effort are welcome.

Issue: Ecology does not have a strong enough enforcement program to achieve permit compliance. When Ecology does fine a facility for noncompliance, the fine is typically too low, failing to provide adequate incentive for compliance. Ecology should not be in the business of "customer relations" but enforcing compliance. **(16, 40)**

Response: Ecology has spent considerable time developing an agency enforcement strategy that is responsive to environmental risk and overall agency mission. The actual response will vary depending on site-specific circumstances but typically Ecology's first step for facilities that are not achieving compliance will be technical assistance and a listing of steps that must be taken to achieve compliance. This approach is productive and environmentally sound for those facilities that are cooperative and responsive to a technical assistance visit. A failure to cooperate and correct deficiencies will typically result in escalating enforcement actions and ultimately a penalty.

While the permit defines compliance it does not dictate when enforcement actions will be taken or what penalties will be issued. Ecology is committed to defining the most effective options for enforcing permit provisions. Enforcement actions will be designed to assure that the overall objectives of the permit are being met and to focus efforts where environmental risk is greatest.

Issue: Although the permit requires compliance with standards, the permit does not allow a clear picture of whether facilities are in compliance with standards. The permit fails to require sufficient documentation and reporting by the Permittees and too little oversight and evaluation by Ecology to assure compliance with standards. **(8, 11, 34, 36, 39, 41, 49)**

Response: Ecology believes that the permit addresses compliance with standards in a productive and directed manner, providing reasonable assurance of compliance with standards. The permit deliberately limits the scope of Permittee reporting and Ecology oversight and evaluation so that attention will be paid where it is most needed. This permit covers nearly 1300 facilities. A reporting requirement that requires just 10 minutes per item to record receipt of the report and file it, would require over 200 hours of staff time. Receipt of reports from all Permittees where each report would require just two hours to read, evaluate and respond would require more than a year of staff time to complete. The commitment of Ecology staff time needs to be directed to where it will do the most good rather than requiring across the board submittals and Ecology review of all Permittee actions. The permit does require the submittal of stormwater sampling results from all Permittees. This is an effective use of resources because this data can be used to determine which facilities require further attention, allowing Ecology to focus its resources where they will do the most good. The permit adequately provides for additional reporting by the Permittee and oversight by Ecology where it is needed.

Issue: Ecology needs to require sufficient information from Permittees and those seeking "No Exposure" status to allow the public to provide a meaningful review. This information needs to be easily available and with geographical sorting ability. **(21)**

Response: The permit does require appropriate geographical information about both the facility and the receiving water. Ecology will look at ways to make that information readily available and provide sort capability for key geographical and receiving water information. Ecology does not intend to require photographs or any additional sampling results not already included in the permit.

Issue: Stormwater is a major contributor to environmental degradation and the permit fails to go far enough to address this very important issue. We can not wait any longer to aggressively reduce pollutants in stormwater. **(5, 9, 11, 14)**

Response: Ecology agrees that stormwater is a significant contributor of pollutants to waters of the state. The sampling and analysis requirements of the permit are designed to illuminate how industrial activities are or are not contributing to the overall pollution of stormwater. This monitoring will allow for both short term focus and pollution reduction at specific problem sites and more precise long term strategies for addressing stormwater pollution from industrial activities.

Issue: During the workshops Ecology said they intended to post monitoring results on the Internet. While this information is subject to public disclosure it should not be posted on the Internet as it could easily result in unwarranted harassment lawsuits. **(31, 33)**

Response: This is a permit implementation issue and does not require any change in permit language. Ecology will consider these comments along with those requesting easy access to useful information before determining exactly what will be posted on the Internet. The use of the Internet is intended provide an efficient means for Ecology to communicate with the public and make commonly requested information available.

Issue: The permit is too complex making it very difficult for Permittees to achieve compliance. It also fails to recognize the inherent differences between process water and stormwater. The permit should include more flexibility, base requirements on a cost/benefit analysis, and should rely more on the Permittee exercising reasonable judgment. It is likely to drive Permittees to request an individual permit. **(7, 18, 20, 35)**

Response: Ecology desires a permit that is as easy to understand as possible. The complexity of the issues and industrial activities however, resulted in a lengthy permit that must be read carefully. Ecology does expect to continue providing technical assistance to help Permittees understand and comply with the permit. However, much of the permit has not changed and should not be viewed as new or additional requirements. The stormwater pollution prevention plan has the same basic requirements as before. There is the addition of a monitoring plan and Ecology will provide workshops to help Permittees with that new requirement.

The permit has been revised as possible to avoid language that is specific to process water and not applicable to stormwater (e.g. deletion of general condition G3). However, Ecology does not agree that water quality standards should not apply to stormwater. Ecology also believes the permit applies flexibility where it is appropriate. The permit does require application of the Ecology Stormwater Management Manual or equivalent manual. The best management practices in the manual have received a cost/benefit analysis and do distinguish between essential and optional best management practices.

Although any Permittee can request an individual permit to replace coverage under the general permit, the Permittee must demonstrate why the change is necessary. This will include submission of the Environmental Protection Agency's Form 2F and all information necessary to justify the change. Ecology does not believe that an individual permit will most often be required and the general permit will remain the most appropriate permitting tool for typical industrial activities.

Issue: This is an NPDES permit and should not include discharges to ground water. **(44)**

Response: The permit is both an NPDES and state waste discharge permit. State law clearly includes underground waters of the state within Ecology's jurisdiction for regulation.

Issue: The permit should include whole effluent toxicity testing (WET) because it is a very important tool in determining compliance with standards. **(33)**

Response: Ecology agrees that WET testing is a valuable tool in determining compliance with standards. In considering the use of WET testing, however, Ecology determined that it would be better to focus on a limited set of parameters initially. This was not intended to preclude the use of WET testing in the future or in any way suggest that WET testing would be inappropriate. Ecology intends to conduct stormwater sampling during the permit term and to do WET testing as part of the analysis. This effort will provide a basis for how WET testing may be applied in the next permit revision.

Issue: Ecology should have held at least some hearings in the evening for people that work during the day but would like to provide testimony. **(11)**

Response: At least one evening meeting will be scheduled in the future to allow an opportunity for people that work during the day to provide testimony.

Issue: The permit seems to use the terms, "waters of the state", "surface water", and "receiving water" interchangeably and it is unclear if there is any difference in the use of these terms. **(33)**

Response: Waters of the state is the broadest most inclusive term and its use is intended where the full range of all types of surface water and ground water apply. Surface water is used to distinguish waters of the state that are not ground water. Receiving water is used to identify the waters where compliance with standards will be determined.

Issue: The federal government, Bureau of Reclamation, maintains water conveyance and storage facilities. There are issues with stormwater discharges to these facilities. The Department of Ecology needs to be involved with the Bureau on how to maintain water quality in these water storage and conveyance systems. **(2)**

Response: Ecology has no disagreement on the need to work collectively to resolve problems. There may be issues of staff time and objectives but the request will be brought up as a permit implementation issue.

Issue: A permitted facility should not be held accountable for stormwater originating outside of their area of control (run-on) and running onto their facility. This is a major problem where there are multiple sources contributing to the stormwater and when the other sources are not under permit. Perhaps Ecology should write general permits for drainage basins and include all those activities in the basin that contribute to stormwater contamination. **(7, 20)**

Response: Ecology recognizes the difficult problem of dealing with water quality issues that result from stormwater from outside the control of a permitted entity. The problem is that this is a civil issue and Ecology must regulate based on the discharge from the permitted site. If the run-on is actually contained in a stormwater conveyance system, the permitted

facility may only be responsible for their discharge to the conveyance system but if the run-on stormwater is not in a discrete conveyance system, the Permittee likely assumes full responsibility. Ecology is intrigued with the idea of a stormwater general permit for a drainage basin but at this time that does not appear to be an effort that can be supported at current staff levels.

Special Condition S1 – Permit Coverage

Issue: Does the permit apply to trucks that are on the road such as when they are stopped at rest area? What about independent truckers that hire their services to other operations? **(26)**

Response: Permit coverage under the motor freight transportation and warehousing category does not apply beyond the boundary of the industrial activity. The permit does not apply to the truck once it leaves the permitted site. Likewise, unless the independent trucker is engaged in warehousing as well as trucking, permit coverage does not categorically apply. Transportation facilities only require coverage under this permit if they meet the requirements listed under category 8 as defined in Appendix 1 of the permit. However, if an industrial activity is determined to be a significant contributor of pollutants to stormwater, coverage can be required under S1.E. of the permit.

Issue: Since Ecology does not have sufficient staff to investigate and evaluate all applications for "no exposure", facilities should not be allowed to avoid permit coverage based on "no exposure". S1.B.1 should be deleted. **(36)**

Response: Ecology will offer "no exposure" to facilities that qualify by filling out the form and affirming they have "no exposure". The majority of facilities that should apply for "no exposure" are in the light industry category and are not currently under permit coverage. The change here is that now they need to apply for "no exposure" and previously they did not have to notify Ecology. If all of these facilities do apply as required by the revised permit, the comment accurately notes that Ecology does not have sufficient staff to investigate all applications. But there now will be a record of those claiming no exposure which is beyond the requirements of the current permit. Ecology will also be able to investigate sites based on screening criteria such as currently under permit, SIC, and public concerns. S1.B.1 will not be deleted.

Issue: S1.B.3 should be expanded to make it clear that ground water only discharges, discharges exclusively to sanitary sewer, and discharges as land applications do not require "no exposure". **(24)**

Response: The permit clearly states that only industrial activities that discharge to surface water are categorically required to obtain coverage. The provisions of S1.B. specifically state that ground water only, exclusively to sanitary sewer, and land application are not required to obtain coverage. "No exposure" only applies to those that otherwise require coverage and to add the proposed language would likely make things more confusing rather than less confusing. There will be no change.

Issue: Small construction activities, those in the 1 to 5 acre range, should not require additional permit coverage. The industrial stormwater general permit should provide coverage for these activities or at least not exclude it. **(20)**

Response: Ecology has not determined how permitting of small construction sites will be handled. Until this issue is resolved it is not appropriate for the industrial stormwater general permit to address the issue. The exclusion will remain but if the general permit for small construction activities provides this option, Ecology will modify the industrial stormwater general permit to accommodate.

Issue: The permit should clearly state that all categories included for coverage under the industrial stormwater general permit are eligible for "no exposure". **(27)**

Response: The first paragraph of Special Condition S6. – Conditional "No Exposure" Certificate was modified to clearly state that all categories identified under S1.A. – "Who is Required to Have Coverage…" may be eligible for "no exposure".

Issue: The permit should address whether inactive facilities require coverage. **(27)**

Response: S1.A.6. addresses the issue of inactive facilities. It can be logically concluded that an inactive site does not require coverage unless significant materials remain on site and are exposed to stormwater. No permit change.

Issue: Does Ecology expect a facility to have permit coverage if it typically discharges all stormwater to ground but could have a discharge to surface water during an exceptional storm? **(27)**

Response: If a facility has an unauthorized discharge to surface water, then they should obtain coverage. Ecology may also require coverage if it is determined that such a discharge may occur.

Issue: Special Condition S1.C.6. excludes facilities that have a "control plan" that regulates stormwater discharges in a way that makes the industrial stormwater general permit inappropriate. How would a facility know if such a plan exists, if the permit is inappropriate, and what are these plans? **(22, 41)**

Response: Any facility that is unsure about the applicability of the industrial stormwater general permit should contact Ecology. This provision is included to identify situations such as special requirements for the protection of endangered species or total maximum daily load determinations where the general permit may not be applicable. It was not a result of any specific control plans that limit permit applicability.

Issue: Special Condition S1.C.7. excludes facilities that discharge to 303(d) waters unless they can meet the conditions of S3.D. Since that condition provides a compliance schedule for existing facilities that exceed the limit, what does this provision actually preclude? Facilities should not be excluded but should just have to meet the limits or not be permitted at all. **(36, 41, 49)**

Response: This condition applies to new facilities that will not be able to meet water quality standards for the listed parameter at the point of discharge. It is possible that they might still be permitted under an individual permit but the general permit would not be applicable unless they can meet the permit limits. Facilities that fall into a category that requires a permit for stormwater discharge but cannot obtain coverage under the general permit, must apply for an individual permit. No permit change.

Issue: Special Condition S1.D.1, "Modification of Permit Coverage" defines when a Permittee must submit a modification of coverage. It is unclear however how you determine "different" or "increase" as it applies to pollutants. The permit needs to be more clear on how you apply this condition. It is also unclear whether this only applies to modification of a mixing zone or adding a mixing zone as well. **(20, 45, 49)**

Response: Ecology agrees that this provision should be revised. The revised language appears under the section "Changes to the Final Draft Permit". The permit defines the term "significant amount" to be an amount that is amenable to prevention or treatment or would cause a water quality violation. The permit was revised to include significant amount as the threshold on when a change in pollutants requires modification of coverage. The Permittee will be responsible for making that determination but if in doubt should contact Ecology. The language was also changed to presume that any additional activity as identified by a new SIC would require modification of coverage.

The permit was revised to clarify that modification of permit coverage is required to "add" a mixing zone as well as modify one. Language was also added to require modification of coverage if a facility is proposing to modify sampling protocol.

Issue: Special Condition S1.E., "Coverage for Significant Contributor of Pollutants" should require coverage for facilities discharging to porous soils, shallow aquifers, vulnerable aquifers, or other increased potential for ground water contamination. Who determines when coverage for discharges to ground require coverage? **(36, 37, 49)**

Response: Ecology agrees that there is greater concern about stormwater discharges in areas where there is an increased potential for ground water contamination. However Ecology does not intend to add new mandatory categories to the permit but will continue on a case-by-case basis. The issue of aquifer vulnerability and stormwater discharges will be reviewed as part of implementation of the permit.

Issue: Special Condition S1.F., "Coverage for Discharges to Ground Water" is confusing. What discharges to ground require coverage and is there sampling for discharges to ground? Does coverage under the permit meet the requirements for an Underground Injection Control (UIC) permit? **(20, 23, 49)**

Response: S1.F. applies to all facilities with coverage under this permit. Typically that means facilities that also discharge to surface water, although it of course applies to ground water only discharges that are included under "significant contributor of pollutants". Washington state includes regulations for discharges to ground. The Permittee must manage stormwater to protect ground water as well as surface water. However, the permit does not require sampling and analysis for discharges to ground. Sampling and analysis could be required by Order where there are specific concerns about pollutants such as in the case of "significant contributor of pollutants". Language was added to include visual monitoring for discharges to ground. Revision also included language that specifically states that this permit does not substitute for UIC permitting.

Special Condition S2 – Coverage Requirements

Issue: Special Condition S2.B.1, "Facilities Currently Under Permit" should also require submission of an updated stormwater pollution prevention plan for existing facilities. Identifying the receiving water may be a very difficult task and providing an appropriate identification uncertain. How do we know what a receiving water is if we discharge to a ditch? Why should we submit information about the receiving water if we already included it in our SWPPP? **(3, 4, 19, 40, 44, 49)**

Response: Precise information about the receiving water is essential for Ecology to determine permit requirements (e.g. discharges to 303(d) listed waters). The permit was also revised to require existing Permittees to certify that they meet basic requirements if they are to receive a mixing zone. Therefore the permit requires all existing Permittees to fill out and return the identification of receiving waterbody and declaration of mixing zone form. Ecology will include instructions for completing the form, along with suggestions on how to identify the receiving waterbody. Ecology will also provide technical assistance to the extent possible. Ecology has recently received a copy of the stormwater pollution prevention plan and is not requesting updates for all facilities. Updates will be requested as needed to address sites where there are identified water quality concerns. Concerns may be based on monitoring results or complaints.

Issue: Special Condition S2.B.2., "Facilities with Applications Currently Pending" should require all facilities to submit updated information. It is also unclear what happens if they fail to submit requested information. **(36, 40, 49)**

Response: Ecology used "may" require additional information in the final draft because it was anticipated that some applications might include all the needed information. However, the declaration of mixing zone is new and will not already be submitted. Therefore the permit was changed from "may" be required to "will" be required. Any applicant that does not return the requested information will not receive coverage and their application will be cancelled.

Issue: Special Condition S2.B.3, "New Facilities or Existing Facilities Not Under Permit Coverage" defines new facilities and existing facilities.

The permit should include time for facilities identified as "significant contributors" to apply for coverage and come into compliance. **(45)**

There are problems with the definitions of new facilities and existing facilities and how they are used elsewhere in the permit. **(27, 45, 49)**

Ecology should evaluate the SWPPP and determine if it is adequate. It is not fair to the Permittee to find out later that their SWPPP is deficient. **(23)**

Existing facilities should be required to submit stormwater pollution prevention plan (SWPPP) updates to Ecology to keep them current. Existing facilities that are categorically included for permit coverage but failed to obtain coverage should not be allowed a compliance schedule. **(36, 39, 41, 49)**

Response: Since significant contributors are not categorically included for coverage, Ecology agrees that there should be time for them to apply for coverage and come into compliance. This was the intent and the permit was revised to clearly identify this category as an existing facility. Existing facilities have 30 days to apply for coverage once identified by Ecology as requiring coverage and there is a compliance schedule for developing and implementing a SWPPP. The "Compliance with Standards" language of Special Condition S7 also recognizes the compliance schedule identified in this provision (S2.B.3.)

The definition of existing facility was a concern in the final draft. The definition was revised to be any facility that existed prior to the effective date of the revised permit (September 20, 2002). This change should reduce the confusion and provide consistency elsewhere in the permit.

Preparation and implementation of the SWPPP is the Permittee's responsibility. Ecology has produced a guidance document for preparation of the SWPPP and that document will be updated to reflect changes in the revised permit. However, Ecology is not staffed to review and approve SWPPPs but will typically provide technical assistance including review of the SWPPP during site inspections.

Ecology has recently received a copy of the stormwater pollution prevention plan from most existing facilities and is not requesting updates from all facilities. If there is no copy of a SWPPP on file with Ecology, Ecology will require a SWPPP to be submitted. Updates will be requested as needed to address sites where there are identified water quality concerns. Concerns may be based on monitoring results or complaints. The compliance schedule for existing facilities that have not already had permit coverage appropriately recognizes the difference between a facility that has not started operation and one that is in operation. If Ecology deems an enforcement action is warranted, the facility can be cited for discharging without a permit.

Issue: Special Condition S2.B.4. requires a modification of coverage before implementing a significant process change.

The Permittee should be allowed to implement the change and monitor to determine if a modification of coverage is necessary. **(20)**

Submitting an updated SWPPP should not be limited to facilities with a significant process change. All facilities should be required to submit updated SWPPPs as requested by Ecology or the Public. **(41)**

Response: Ecology strongly disagrees that the Permittee should be allowed to implement a change and then determine if it is a significant process change. The whole intent here is to determine if permit coverage will still be appropriate after the process change and there must be an opportunity for the public to comment. Permittees that are considering a process change must estimate the impact of that change to determine if it is likely to meet the significant process change language in Special Condition S1.D., "Modification of Coverage."

Ecology has recently received a copy of the stormwater pollution prevention plan from most existing facilities and is not requesting updates from all facilities. Updates will be requested as needed to address sites where there are identified water quality concerns. This can include concerns expressed by the public.

Issue: Special Condition S2.B.5. specifies modification of coverage requirements for adding or modifying a mixing zone.

There should be no need to apply for a mixing zone since WAC 173-201A-100(10) presumes that a mixing zone exists. **(45)**

There should be no allowance for a mixing zone if Ecology does not have sufficient resource to evaluate if a mixing zone is appropriate. Ecology approval should be required for any mixing zone, not just expanded mixing zone. **(36, 41)**

Response: Ecology does not agree that WAC 173-201A-100(10) presumes a mixing zone exists. The WAC defines the conditions that must be true if a mixing zone is to be applied. The actual application of a mixing zone is not mandated by the WAC. Ecology has chosen to provide a "standard" mixing zone of defined size for Permittees that can certify that they meet the basic criteria of AKART and environmental protection. An application for coverage that includes this certification will be become effective as defined by Special Condition S2.E., "When Does Coverage Begin". WAC 173-201A-100(10) allows for a mixing zone greater than the "standard" mixing zone size provided in the permit. The permit has included this option as an "expanded" mixing zone. Because of added complexity with increasing the mixing zone size, the permit requires a much more detailed analysis by the Permittee when applying for an expanded mixing zone and review by Ecology before it will be authorized.

Issue: Special Condition S2.B.7. (was S2.B.6) requires "light industry" category to either have coverage or apply for "no exposure" if they discharge stormwater to surface water. This is an unrealistic expectation since the light industry category is so large and under the previous permit they were not required to apply if they qualified for "no exposure." **(49)**

Response: Ecology does not disagree that this large group of facilities will be challenged by this requirement. Nonetheless, there is no choice since the Environmental Protection Agency changed the federal regulations. As of March 10, 2003, there is no option for these facilities to just do nothing.

Issue: Special Condition S2.C. provides a compliance schedule for developing and implementing the stormwater pollution prevention plan (SWPPP).

The compliance schedule does not provide enough time. Time to prepare the SWPPP is much too short as is the time allotted for capital improvements. Ecology has changed SWPPP requirements and should provide a compliance schedule for all Permittees to update their SWPPP. The compliance schedule should include any facility that is not categorically included but identified by Ecology as a significant contributor. **(25, 29, 42, 44)**

Ecology should not include extension of time language because it only involves the applicant and Ecology. It amounts to allowing a permit modification without public notice and opportunity to appeal. Instead of extensions, Ecology should simply exercise its enforcement discretion. **(36, 39, 41)**

Response: Ecology agrees that time should be provided for Permittees to implement changes in SWPPP requirements. The new permit requires the development and implementation of a monitoring plan and Permittees will have until March 1, 2003 to complete this new requirement. The permit does not identify any other new SWPPP requirements and has only reworded and provided greater clarity on SWPPP requirements. No additional compliance schedule will be provided.

The permit does provide a compliance schedule for existing facilities that were not previously under permit. This includes facilities that are identified by Ecology as "significant contributors." The compliance schedule establishes a reasonable expectation for aggressively developing and implementing the SWPPP. An aggressive schedule is required because these facilities are discharging stormwater and the environmental risk is real. Ecology also recognizes that with the best of intentions, some facilities may be unable to meet the schedule. Requiring the services of a consultant or obtaining funding to provide for capital improvements may necessarily result in increased time.

The permit could provide longer time frames with no extension possible. Ecology could let projects slide by applying enforcement discretion. Ecology believes the better answer is to stay with current language that includes an aggressive compliance schedule but allows extensions where there is sufficient cause. Written extensions provide a better record than enforcement discretion. Ecology is concerned about providing reasonable opportunity for the public to participate and comment. Public notice is required for existing facilities that should have obtained coverage but did not and any concerns about the implementation schedule should be expressed at that time. Ecology will also consider implementing an Internet page that lists permit applications and Ecology actions.

Issue: Special Condition S2.D. defines the public notice requirements. Public notice in a newspaper of general circulation is not adequate public notice. Ecology needs to do more. **(21, 36, 39, 41)**

Response: The notice in a newspaper of general circulation is consistent with the requirement in RCW 90.48.170 and WAC 173-226-130. Ecology is exploring legislation to revise this requirement. Ecology will consider implementing an Internet page that lists permit applications and Ecology actions but this does not require a change to permit language.

Issue: Special Condition S2.E. defines when coverage begins after Ecology receives a completed application. Coverage is automatically granted unless Ecology notifies the Permittee that additional time is required or unless it is an application for expanded mixing zone or to change sampling protocol.

Applications that include a standard mixing zone should not be automatically granted. Ecology must evaluate and determine if a standard mixing zone will be allowed. **(41)**

The permit should require Ecology to notify interested parties as well as Permittees of decisions on issuing permit coverage. **(36)**

Permit coverage is automatic after 38 days and that is not enough time for Ecology to review the application given Ecology's limited resources. **(34)**

Response: In order to receive a standard mixing zone the Permittee must certify that they meet the basic requirements for a mixing zone including AKART and protection of beneficial uses of the receiving water. This provides a sufficient basis for issuance of coverage with a standard mixing zone. The permit also includes language that provides for immediate revocation of the mixing zone if an Ecology site inspection reveals that the Permittee is not meeting the basic requirements for a mixing zone.

As required by the general permit rule, Ecology maintains a list of interested parties with an interest in the general permit. This same process can be adapted to provide notice to interested parties about a specific permit coverage. This can be done as permit implementation and does not require modification of permit language.

The permit language is consistent with the requirements of WAC 173-226-200. It allows sufficient time for Ecology to review the application for completeness and for the public to submit comments about the applicability of permit coverage for a specific site. Ecology can readily suspend automatic coverage if there is cause. Therefore Ecology will keep the language as is. However, language was added to this section to clearly identify the procedure for appealing the applicability of permit coverage to a specific facility.

Issue: Special Condition S2.F. includes the requirement to send a copy of the applications of coverage to municipalities subject to the EPA Phase 1 stormwater requirements. Why should it be limited to just these six municipalities? Does the EPA Phase 2 regulations require reporting to Phase 2 communities? Why doesn't Ecology notify all municipalities of applications that apply to their locality? The permit or fact sheet should include a local government contact list. **(12, 20, 36)**

Response: The permit includes this reporting requirement because it is required under the EPA Phase 1 stormwater regulations and only applies to applicants within municipalities identified under the EPA Phase 1 regulations. As an implementation issue Ecology will consider the practicality of notifying all municipalities of applications within their jurisdiction. At this time Ecology does not anticipate that it can maintain a contact list of all municipalities as this information tends to require frequent updating to be current. Use of the Internet to list applications and Ecology actions may be sufficient to provide reasonable access to municipalities.

Special Condition S3 – Discharge Limitations

Issue: What will happen if stormwater exceeds allowable discharge limits? **(26)**

Response: The permit only includes numeric limits for discharges subject to the EPA defined effluent limits for stormwater (non-hazardous waste landfills, hazardous waste landfills, and coal piles) and for discharges to waters listed as impaired (303(d)/TMDL). The permit requires compliance with water quality standards but compliance with standards considers available dilution if a mixing zone is authorized. Benchmark values in the permit are NOT limits.

If an existing Permittee discharges to listed waters and exceeds the allowable concentration for the pollutant(s) of concern, they are required to implement the associated compliance schedule. A "new" facility that discharges to listed waters and exceeds the allowable concentration for the pollutant(s) of concern will be in violation of the permit conditions. Likewise a facility subject to the EPA defined effluent limits is in violation of the permit if they exceed any of the listed limits. The permit does not define Ecology's response to a violation of the permit limits. That will be determined by the Ecology regional permit manager and enforcement staff.

Exceeding a benchmark value is not a violation of the permit. It also means that the Permittee must continue to monitor for the pollutant. It does mean that the Permittee should evaluate their management practices and try to reduce the level of pollutant in their discharge. It may also mean that Ecology will conduct a site visit to assess the potential violation of water quality standards.

Issue: The permit only authorizes the discharge of stormwater and all other discharges to the stormwater system are by default not authorized. The federal Multi-Sector General Permit (MSGP) authorizes specific incidental discharges that are not stormwater (e.g. fire hydrant flushing, irrigation drainage, pavement wash waters where no detergents are used). Ecology should include these incidental discharges as authorized discharges to stormwater systems. **(20, 25, 35, 45, 50)**

Response: Ecology does not believe that it is appropriate to authorize these non-stormwater discharges in the industrial stormwater general permit. Typically, discharge to a storm drain system should be avoided and instead should be ground applied if possible. Ecology is not bound by the federal MSGP implementation language and will remain consistent with Ecology's original (1992, 1995) implementation language authorizing only stormwater discharges.

Issue: The permit should specifically identify if deicing/anti-icing fluids at airports are authorized stormwater discharges or process water. Additionally it should specify who is the responsible party for stormwater management associated with these activities. **(25)**

Response: The permit does not include the specific BMPs for each industrial activity. These are included by reference to Ecology's Stormwater Management Manual. Excess deicing/anti-icing fluids at the point of application would be considered process water and must be collected and treated/reused or discharged to sanitary sewer. Additional measures must be taken to minimize the impact of these agents on stormwater discharges. Stormwater monitoring requirements for this industrial group (S4.) are intended to demonstrate how well these BMPs are working. Responsibility for stormwater management depends on who has the day-to-day control of the activity. This may be solely the responsibility of a single

entity or may be a shared responsibility. All SWPPPs of permitted facilities at airport should identify the responsible party for these BMPs and any specific role of the individual permit holder.

Issue: S3.B.1 states that discharge of process water is prohibited but the definition of process water is confusing and needs to be rewritten or provide examples to be clear. **(22, 45)**

Response: Minor revisions were made to the definition so that it is identical with the EPA definition provided in 40 CFR 122.2. No additional language will be added to the permit. However, the definition applies to the act of processing or manufacturing. Water, including stormwater, that comes into contact with the activity of manufacturing or processing is process water. If manufacturing or processing is exposed to stormwater then that portion of the stormwater at the site that comes into direct contact with materials at the point where manufacturing/processing is taking place, is process water. "During manufacturing, processing" is key to distinguishing between process water and stormwater. Stormwater in contact with raw materials and finished product is not process water unless the contact is during manufacturing/processing.

Issue: The permit sets limits for the pollutants of concern in 303(d) listed waters and when applicable for waters subject to a TMDL determination. Mixing zones are not allowed for the 303(d) listed pollutants but a compliance schedule is authorized for existing facilities that exceed the "end-of-pipe" limits for listed pollutants.

The permit illegally applies a compliance schedule and fails to require compliance with standards for Permittee's that discharge to listed waters. No compliance schedule should be authorized or at the most, it should allow only 3 years to come into compliance. Even if the compliance schedule were applicable here, the proposed schedule fails to fulfill the minimum requirements of a compliance schedule such as Ecology selected or approved BMPs. The schedule does not even include an end date. **(5, 8, 11, 21, 34, 36, 39, 40, 41)**

The permit fails to allow consideration of a mixing zone as authorized by state and federal regulations when considering discharges to listed waters. Ecology's determination not to allow a mixing zone is not supported by WAC 173-201A-060 and -100. The compliance schedule requires actions that should not be required unless stipulated by a total maximum daily load (TMDL) determination. There is no legal basis for such severe limitations and the permit should be revised to eliminate "end-of-pipe" limits for 303(d) listed pollutants. Additionally the whole concept of standards and compliance is based on process water and does not apply well to stormwater which is erratic and unpredictable in timing, intensity, duration, and pollutant characteristics. **(18, 20, 23, 29, 30, 35, 45)**

If there is going to be a compliance schedule there should be reporting to demonstrate compliance with the schedule. **(22, 41, 49)**

The compliance schedule fails to provide a way out of the schedule if the Permittee comes into compliance. **(18, 20, 35)**

The permit does not clearly define when a discharge is considered a discharge to an impaired water. Does it include tributaries to the listed segment? Does it include indirect discharges via a municipal separate stormwater conveyance system? What about a roadside ditch? **(24, 45)**

Why do facilities that are required to monitor for listed pollutants also have to monitor for zinc, turbidity, pH, oil & grease? What is the relevance of monitoring for pollutants that are not listed? **(32)**

What does compliance with a TMDL determination mean if the determination does not mention stormwater? How can you demonstrate compliance with the Clean Water Act? **(41)**

Requirements to comply with a TMDL determination should only be applicable where they have been identified by a Detailed Implementation Plan and that plan is part of the permit. Requirements developed after permit issuance should not be applicable until the next permit revision or through permit modification. **(53)**

The exclusion of fecal coliform makes no sense because any industrial site has some potential source of fecal contamination. **(20)**

The exclusion language for temperature and fecal coliform should be repeated with each table of Effluent Limitation for Impaired Waters. **(22)**

Response: Federal regulations require Ecology to identify and list waters that are impaired and to address this impairment as possible through a total maximum daily load (TMDL) determination that allocates pollutant loading to sources. Load allocation along with the detailed implementation plan are all designed to achieve water quality standards in the impaired water and to protect beneficial uses. TMDLs take time to develop and often there is no completed TMDL for a listed water. The listing process is separate from the discharge permitting process. The listing process includes opportunity for public comment and review by the EPA. It is the obligation of the discharge permitting process to incorporate permit conditions consistent with protection of listed waters and TMDL determinations.

Washington state law requires that discharges must be conditioned to protect beneficial uses of the receiving water. Impaired waters are by definition waters where beneficial uses are in jeopardy. Data have been collected that show an exceedence of water quality standards in the receiving water, an exceedence of sediment quality standards in the sediment, or an exceedence of human health criteria for consumption of aquatic organisms. To protect beneficial uses, the permit includes limits for discharges to impaired waters. Discharges to water where there is a completed TMDL must be consistent with applicable requirements in the TMDL determination and detailed implementation plan. Discharges to listed water that have no TMDL must not exceed water quality standards for the listed pollutants. Limits are not set for waters listed for sediment or tissue (see next issue/response).

A mixing zone can not be applied for pollutants of concern in listed waters. The purpose of a mixing zone is to allow consideration of available dilution in the determination of compliance with water quality standards. Federal regulations direct the permitting authority to consider dilution of the effluent in the receiving water where appropriate. State law allows permits to include mixing zones but not if there is "reasonable potential to cause a

loss of sensitive or important habitat, substantially interfere with the existing or characteristic uses of the water body,…" Since water quality listings are based on data that demonstrate an exceedence of water quality-based standards in the receiving water, it must be assumed that at times, no dilution is available because the receiving water already exceeds water quality standards. Therefore it would not be appropriate to consider dilution of effluent in impaired receiving waters for the pollutants of concern. Mixing zones are not applicable for the pollutants of concern because the listing clearly indicates that there is potential to diminish habitat and interfere with beneficial uses.

Federal regulations clearly prohibit issuing a discharge permit for a new or expanded discharge if it will cause or contribute to a violation of water quality standards (40 CFR 122.4(i)). Therefore the permit requires new discharges or those with a significant process change to comply with water quality standards for the listed pollutant. There is no compliance schedule if a new discharge exceeds limits of listed waters. Where a TMDL is completed, a new discharge can only be authorized under this general permit if it will be consistent with the TMDL determination.

A compliance schedule is an appropriate approach where existing facilities exceed limits for discharges to listed waters. Ecology does not agree that the referenced "3-year limit" applies to a compliance schedule as defined here. Washington state regulations allow a permit to include a schedule for achieving compliance with effluent limits. The previous permit did not include limits for discharges to listed waters and it will take time for existing facilities to assess compliance with limits and then to take corrective measures if they exceed the limits. The permit schedule provides a stepwise approach to assessing, taking action as necessary and then reassessing. Monitoring periods were added to the schedule after each action. Additional permit language was added to allow the Permittee to exit the compliance schedule if monitoring demonstrates consistent attainment of compliance with standards and to require reports to be submitted to Ecology at least annually.

Permit limits for listed waters apply if stormwater discharges to the waterbody at a point within the listed segment/grid. (A listed segment refers to that portion of a waterbody within a defined township/range/section. Where the waterbody is very large like Puget Sound, the listed area is called a grid.) This includes discharges to a stormwater conveyance system that discharges to a listed waterbody segment/grid. Permit limits for listed waters do not apply to discharges to the waterbody outside of the listed segment/grid or to discharges to receiving water that is tributary to the listed water. The permit includes new language under Special Condition S.7., "Compliance With Standards", that defines the receiving water as distinguished from a stormwater conveyance system. The associated monitoring of listed pollutants is for the purpose of demonstrating compliance with the limits. It is in addition to the base set of pollutants that all Permittees must monitor for.

Ecology agrees that TMDLs that were completed more than a couple years ago often do not mention stormwater as a significant contributor of pollutants. This does not necessarily mean that there is allocation allotted for new discharges of stormwater. Ecology will have to consider the language of each completed TMDL and determine what impact, if any, it may have on coverage for new stormwater discharges. Ecology presumes that stormwater from existing facilities were considered by any completed TMDL. Any applicable load allocation or requirements in a detailed implementation plan should have resulted in an

individual stormwater permit or implementation of additional BMPs. Future TMDL determinations should provide greater clarity on the stormwater component. The permit includes the flexibility to accommodate requirements to new or existing facilities as a result of a detailed implementation plan. Such flexibility seems inherently more productive then potentially having to revoke coverage and require an individual permit. Ecology does not intend to include in the permit, other then by reference to impaired waters, a list of all TMDLs and their implementation plans or all listed waters and their pollutants of concern. Ecology does intend to notify Permittees if they are subject to limits or additional requirements as a result of discharging to impaired waters.

The permit excludes temperature from the list of pollutants subject to limits for stormwater discharges to listed waters. It also excludes fecal coliform unless there is an "industrial source". Industrial source does not include incidental contamination from animals such as birds and mice that are not an "industrial source" and cannot be practicably excluded from the site. Since Ecology will notify Permittees if they are subject to limits based on discharging to impaired waters, there is no significant value in repeating the exclusions with the associated limit tables.

Issue: Ecology must not include listings for violations of sediment standards or for "tissue" violations. Ecology has not established how to determine a violation for these media based on effluent samples. **(7, 18, 35)**

The permit should be revised to indicate that the most current 303(d) listing will apply. This will also require Ecology to notify Permittees if the status changes. **(36, 39)**

Limits for listed waters should not apply until the 2002 listing becomes final. Permittees should not be required to invest in monitoring when a water segment may be delisted. **(35)**

Response: Ecology is unable at this time to determine a violation of sediment standards or tissue based on an effluent sample. The permit language that sets limits for 303(d) listed waters will apply only to pollutants listed pursuant to water column-based standards. Language was added to Special Condition S4 to require monitoring of total suspended solids (TSS) for discharges to sediment limited waters. No additional monitoring will be required for tissue-listed waters.

Language was added to Special Condition S.7., "Compliance With Standards", identifying the most current list of listed waters as the applicable list. While this may cause some confusion when new waters are listed and if any listed waters are "delisted", Ecology assumes the burden of informing Permittees that are affected. There should be minimal impact to the Permittee initially because the "2002" 303(d) listing should be available before stormwater sampling and analysis is initiated by this permit.

Issue: Special Condition S3.E. defines how mixing zones will be applied. It includes the criteria that must be met to be eligible, the size limitations of the standard mixing zone, and the expanded mixing zone option.

The permit does not require a sufficient demonstration that a mixing zone is applicable as required by WAC 173-201A-100. A check box certification is not sufficient. Ecology fails to provide reasonable evaluation and oversight to receiving a mixing zone. There is no

provision to account for cumulative effects of multiple discharges. The standard mixing zone is too generous and an expanded mixing zone should not even be an option. An expanded mixing zone is not reasonable because Ecology will not be able to adequately determine all the potential impacts. The Permittee should have the burden to prove that they

meet the legal requirements to be eligible for a mixing zone. The general permit should not authorize any mixing zone without thorough Ecology review. **(1, 5, 8, 10, 21, 34, 36, 37, 38, 39, 40, 41, 47, 49)**

WAC 173-201A-100(10) presumes a mixing zone exists for stormwater discharges and there should be no need to apply for one. Ecology is inventing regulatory language in defining when a mixing zone is applicable. The permit needs to be consistent with state and federal law. The permit fails to specifically identify the "design storm" and does not incorporate the stormwater mixing zone option for storms exceeding the design storm. **(18, 30, 45)**

Response: The permit has addressed the requirements of WAC 173-201A-100, "Mixing Zones" within the context of a general permit. That regulation defines the requirements that must be met to be eligible for a mixing zone and it defines requirements for authorizing a mixing zone in a permit. One of those requirements is that the permit include the size of the mixing zone. The industrial stormwater general permit defines the size of the "standard mixing zone". The permit incorporates the requirements that must be met to allow exceptions to restrictions on the amount of waterbody available for dilution considerations and overlap with other discharges. The final draft referred to "all appropriate best management practices established for stormwater pollutant control have been applied to the discharge." This language was revised to more exactly reflect regulation language that all known available and reasonable methods of prevention, control and treatment (AKART) must be met. Added language specifies the basic components to achieve AKART for this permit. New permit language also provides for automatic revocation of the mixing zone if an Ecology inspection reveals that a site fails to meet the eligibility requirements for a mixing zone.

Ecology believes that the permit adequately addresses the issue of authorizing a mixing zone. The regulation clearly states that a mixing zone is not automatic but must be based on evidence that clearly indicates that it is environmentally acceptable. The permit requires permit applicants to make this demonstration by completing the mixing zone applicability portion of the application for coverage. Existing facilities must make this demonstration by completing the same information on the Identification of Receiving Waterbody and Declaration of Mixing Zone form. Mixing zone applicability is listed in S3.E.1. and lists requirements from the regulations and limits the applicability of mixing zone for impaired waters. Certifying that these conditions are met provides the demonstration Ecology requires to authorize a mixing zone for a site. This level of approach is appropriate under a general permit. The permit includes the safeguard of sampling and analysis. Where monitoring results raise a concern, Ecology can do a more thorough investigation.

Ecology is confused by the reference to inventing regulatory language in defining mixing zone applicability. Requiring AKART, no loss of sensitive or important habitat, and no barrier to the migration or translocation of indigenous organisms are all part of the

administrative code for mixing zones. The size of the standard mixing zone takes into consideration the regulatory language that allows for exemption to numeric size criteria in stormwater discharges and traditional application of a mixing zone up to the legal limit for achieving compliance. The standard mixing zone applies the maximum distance of mixing zone that may be authorized for process water discharges without consideration of depth of water. This is the distance that would likely be allowed under an individual permit if necessary to achieve compliance with water quality standards, assuming all other requirements are met (e.g. AKART). Because the administrative code allows for exemption to all numeric size criteria in stormwater discharges, a facility may apply for an even larger mixing zone under the permit provision that allows for an "expanded" mixing zone. Because this provision does not limit the size of the mixing zone, a significant demonstration of environmental compatibility is required.

Issue: It is illegal and unacceptable for the permit to allow Permittees to obtain a mixing zone without providing public notice and opportunity to comment and appeal authorization of a mixing zone to an industrial site. What happens if the Permittee certifies that they meet the requirements for a mixing zone but they don't? What happens if they lose their mixing zone, can it be reinstated? **(41)**

The law requires that all known available and reasonable methods of prevention, control and treatment (AKART) be applied before a mixing zone can be authorized. Does this equate to the permits requirement for all applicable best management practices (BMPs)? **(20)**

Response: The permit does not require existing facilities to modify coverage in order to qualify for a mixing zone. The permit does require existing facilities to complete a form that identifies what "receiving water" they discharge to. A mixing zone request has been added to the form and permit language added to require completion of this section to receive a mixing zone. The Permittee must certify that they have implemented AKART and meet the other conditions required for mixing zone eligibility. AKART language has been added to the permit. Concerned citizens can address the applicability of a mixing zone for a specific site by appealing permit applicability to a specific existing facility within thirty (30) days after the permit becomes effective. Mixing zones are automatically revoked if a site inspection reveals that they do not comply with the mixing zone eligibility requirements listed in the permit. Once revoked, a facility would have to submit a modification of coverage to receive a mixing zone. Such a modification would almost certainly require a site visit verification before it would be accepted.

Permit language was added to clarify what is AKART under this permit. Although it does not list specific BMPs it does require a complete and implemented stormwater pollution prevention plan and all BMPs required for an industrial activity by Ecology's stormwater management manual.

Issue: How would the mixing zone apply to something like a man-made ditch such as a drainage ditch? Doe it fit in the category of "other" and if so what does that mean? **(51)**

How is a mixing zone defined if the stormwater discharge is to a municipal stormwater conveyance system? **(22)**

Response: A site-specific consideration will have to be made to determine how a mixing zone might apply to a man-made ditch or other waterbody. If the ditch functions like a stream, stream/river mixing zone is likely to apply. If the ditch is more like a pond, the lakes mixing zone would likely apply. If the discharge is to a stormwater conveyance system, it will be the receiving water for that conveyance system that defines the mixing zone. Language was added to the permit to define "receiving water" versus "stormwater conveyance system". A "drainage system" would not be a stormwater conveyance system even though it may also convey stormwater.

Issue: The permit requires facilities to manage stormwater to prevent the discharge of petroleum as identified by an oil sheen and floating materials. The permit should define the size threshold for floating material. A "sheen" is an unreasonable threshold as it can result from natural products as well as petroleum and is subjective in nature. **(20, 45)**

Ecology should use the word "oil" instead of petroleum and include both processed, natural and synthetic as well as oil-containing products in this permit condition. **(42)**

Response: Ecology does not agree that this somewhat subjective permit condition should be removed or defined in specific terms of particle size for floating materials or quantification of oil in an oil sheen. The focus should be on what the intent of this provision is, an evaluation of site management based on visual evidence of oil sheen and floating material. Evidence of oil sheen should result in determining the probable source of the oil and management practices to control that source. The same applies to floating debris.

Ecology does agree that "petroleum products" does not define the intent as well as "synthetic, natural or processed oil or oil-containing products" and revised the permit accordingly.

Special Condition S4 – Monitoring Requirements

Issue: Groundwater dischargers should not be required to monitor for the same pollutants as is required for discharges to surface water. **(23, 25)**

Response: Ecology agrees that groundwater discharges only should require sampling if specific sampling requirements are defined in an Order issued by Ecology. This was the intent of the draft permit but additional language has been added to make it more clear.

Issue: Facilities that discharge from a detention/retention ponds should not be subject to sampling in the first hour of discharge. It is also unclear why facilities with ponds should be subject to the 0.1 inch rainfall event or 24 hours without precipitation. **(13, 15, 32)**

Response: While detention/retention ponds can result in a homogenous stormwater discharge where the sampling protocol makes less sense, this is not certain. Systems subject to "flow through" for instance might still function more like a direct discharge. For consistency, Ecology does not intend to change the basic sampling protocol. Ecology did add an option that allows Permittees to offer a better sampling protocol as a modification of coverage. Modification of sampling protocol must demonstrate that the change will result in improved stormwater sampling for the site.

Issue: Limiting sampling to the first hour of discharge is too restrictive and doesn't recognize business realities. If you sample in the first hour you will not know if it is a 0.1 inch rainfall event. If you sample and you don't meet the rainfall amount, you have wasted time and money. How do you know if there was enough rain at your location? Sampling in the first hour is not representative of the discharge, particularly so when it is a grab sample. It is understood that "first flush" does not exist in the Pacific Northwest. The permit should not limit sampling to only grab samples. Time-proportional and flow-proportional sampling are better and should not be disallowed. There seems to be an inconsistency between the requirement to take a grab sample and the requirement to take a representative sample. The sampling protocol is overly complex and will cost too much to follow. The permit should just require the Permittee to capture a sample during the first significant rain event of each quarter and not consider the "first flush" effect. Companies/municipalities with multiple permitted locations and/or multiple sample points will have difficulty meeting the sampling protocol particularly in the 3rd quarter when there are limited number of rain events. A company would have to be staffed 24 hours a day, 7 days a week to assure getting a sample within the first hour of discharge. How do you determine the first hour of discharge if there is a base flow in the stormwater system and more or less constant discharge? Quarterly sampling is excessive and it should be changed to semi-annual. Reporting should be changed to annual reporting. The sampling protocol should be a goal not a requirement. **(3, 4, 18, 19, 20, 22, 26, 29, 31, 32, 35, 42, 43, 44, 45, 49, 51, 53)**

Response: The goal of stormwater sampling is to capture a stormwater sample with the highest odds of a snapshot of stormwater from a site at its worst. The permit will retain the language that requires monitoring within the first hour of discharge. After reviewing different options this still represents the option that is easy to understand and follow, and likely to catch the "worst case" level of pollutants. Storm intensity might be a better option but it is much harder to describe and would be more difficult for Permittees to implement. Multiple samples throughout a storm might be desirable but the possible benefit is insufficient to justify the significant increase in cost and complexity of sampling. There will be additional information on this when Ecology completes the stormwater sampling guidance document. While Ecology recognizes that it will take a significant level of effort for businesses to comply with this requirement, the effort is justified by the very real problem of stormwater pollution and the need for data to begin to understand how much specific sites and industrial activities in general contribute to stormwater pollution. The sampling protocol provides basic sampling criteria designed to make stormwater data as useful as possible.

Ecology agrees that time-proportional and flow-proportional sampling should be allowed and language was added to include these options. The permit was also revised to allow a Permittee to develop an alternative sampling protocol. The alternative protocol must be submitted as a modification of permit coverage and requires Ecology's approval to be accepted. An alternative sampling protocol must demonstrate that it will result in data of similar or superior quality to the protocol listed in the permit. Sampling must focus on catching "worst case" levels of pollutants in the stormwater discharge.

When completed, the stormwater sampling guidance will provide useful information on when and how to take a stormwater sample. It should help alleviate concerns on how to comply with the 0.1 inches of rain in 24-hour criterion. Ecology does not require the

Permittee to measure the amount of rain at their site in order to determine compliance with the 0.1 inch of rain in 24-hours. If there is a rain event of sufficient intensity that it generates a lot of stormwater discharge, the Permittee will typically be able to assume that a sample in the first hour of discharge will meet protocol. The permit allows the Permittee to submit sample results even if one or more criteria of the protocol are not met. The Permittee must explain the deviation from protocol and why it occurred. While deviation from protocol would not be acceptable on an ongoing basis, Ecology would not expect to take any enforcement action based on an isolated event. The emphasis is on consistently getting a good stormwater sample each quarter and providing tangible evidence of how clean or dirty the stormwater discharge is.

If there is "base flow" in the stormwater conveyance system, the Permittee may need to sample stormwater as it enters the conveyance system rather than where it discharges to a receiving water. The stormwater sample should be representative of stormwater from industrial activities without influence from ground water infiltration. In any case, the first hour of discharge criterion refers to discharge of stormwater and the Permittee must be able to discern between a discharge resulting from stormwater and a base flow discharge.

Sampling is conducted quarterly and monitoring results must be received by Ecology at the close of each quarter. Ecology does not agree that annual reporting would be better. Annual reporting increases the workload for Ecology by focusing all the attention on one annual submittal. It increases the potential for Permittees to lose or misplace results or to forget to submit the results altogether. Ecology does not believe that a quarterly submittal of monitoring results poses any significant increase in burden to the Permittee over annual reporting and quarterly submittal provides more timely information.

Ecology does not agree that the sampling protocol should be expressed as a monitoring goal. As a requirement, the protocol represents the expectation that the Permittee will sample according to the criteria but as a goal it would not carry the same expectation. Since sampling and analysis is a critical component of the revised permit, it is important that the protocol be a requirement. As previously stated, Ecology recognizes that sometimes a Permittee may need to submit results that fail to meet one or more criteria. Applying enforcement discretion provides any needed flexibility on complying with sampling protocol.

Companies or municipalities that have several permitted facilities at divergent locations may find it difficult to monitor all locations by the same staff person. Under these conditions it may be necessary to expand the pollution prevention team to include an on-site person at each location that can take samples under the direction of the primary environmental compliance staff person. Where there are limited opportunities to take a qualifying sample, such as during the summer drought, having an on-site person that can take the sample may be critical.

The permit does not require sampling outside of business hours. In eastern Washington or in western Washington during the summer drought, this could mean no opportunity to take a sample during the entire quarter. It is not a permit violation to take no sample because there is no qualifying storm event. The Permittee must file a report and must identify that there was no discharge to sample.

Issue: An antecedent event of 24 hours with no discharge does not make sense. Facilities with treatment systems may not even have a discharge within the first hour of a storm. There may also be long periods when there is no rain but there is still a discharge, making the 24 hours of no discharge problematic. **(20, 32, 35, 45, 53)**

Response: Ecology agrees that the 24 hours of no discharge before a valid storm event is misstated. The intent is to have a 24-hour dry period and the permit was changed from 24 hours of "no discharge" to "no measurable precipitation".

The permit does not require a sample to be taken within the first hour after a storm begins. It requires that the sample be taken within the first hour after a discharge begins. If treatment systems such as a bioswale soak up all the moisture and there is no discharge, there is no sample to be taken and no violation of permit. The permit only requires sampling if there is a discharge.

Issue: There should be no delay in sampling. The permit should require that sampling begin as soon as the permit becomes final. **(36, 41)**

The air transportation monitoring should begin in December 2002. **(41)**

There should be 72 hours of no rain prior to a qualifying storm event, not 24 hours. The data should capture first flush effects and 24 hours is insufficient. The permit should be consistent with the fact sheet which says it will be a 72-hour period. **(36, 40)**

Response: The purpose of sampling is to gather the best data we can about the quality of stormwater discharges. There is a great advantage in allowing Permittees and Ecology to have a reasonable time to implement this new provision. Ecology needs time just to properly set up the database so that the correct receiving water is identified and applicable monitoring requirements identified. Permittees need time to prepare a monitoring plan, identify and contract with a laboratory, establish sampling procedures, and budget for this activity. Providing time to proceed in an orderly and productive fashion is reasonable and will increase the value of the data that will be submitted. Therefore the permit will include a six-month delay in implementation of stormwater sampling. This will apply to the air transportation industry sampling as well.

The 72 hours of no precipitation is from the EPA guidance on stormwater sampling. The EPA guidance was not developed for Washington state but was a national document. It does not recognize the weather patterns of the Pacific Northwest. 72 hours would unreasonably restrict the number of qualifying storms that may be sampled during the wet time of the year in western Washington. A review of climatologically data suggests that it is necessary to reduce the antecedent no precipitation to 24 hours if there is to be reasonable opportunity for Permittees to comply with this protocol and achieve quarterly samples. Ecology is confused about the referenced inconsistency with the fact sheet. The section of the fact sheet that discusses monitoring requirements states that the permit will use an antecedent 24-hour "dry" period for the reasons stated above.

Issue: What does the permit mean by "business hours"? If we have a skeleton crew at night for maintenance activities does that mean we must sample at night? If a site is inactive and unstaffed, sampling should not be required. Sampling after dark is unsafe. The permit should restrict sampling to daylight hours. **(20, 29, 44)**

Response: Ecology did not intend "business hours" to include any time there is an employee present but did intend it to include those hours and days when the site is staffed to conduct the industrial activity that is under permit. A definition of "Regular Business Hours" was added to the permit definition section. Language was also added to the permit to address the issue of "inactive and unstaffed". It does require notification to Ecology but typically no sampling would be required.

Ecology does not expect sampling to be conducted at the risk of personal safety. While the permit does not try to list all the conditions that may be unsafe for sampling, the Permittee should include in their monitoring plan how they will meet sampling requirements in a safe manner. This should include any employee training that may be necessary and if daylight is required, that should be included.

Issue: Stormwater discharges from office buildings and parking lots are categorically exempted from stormwater permit requirements. The monitoring provision, S4, should specifically exclude these areas from monitoring requirements. **(45)**

Response: The monitoring requirements are for authorized discharges subject to the permit. Stormwater discharges from office buildings and parking lots that do not commingle with stormwater water from areas associated with industrial activity subject to the permit do not require monitoring unless specifically included as a "significant contributor of pollutants". Ecology does not believe it is necessary to add additional language in S4.

Issue: We do not understand what difference the volume of discharge makes as long as we are sampling the discharge that will have the highest concentrations of pollutants. Ecology should eliminate the "similar volume" requirement for considering how many discharge points must be sampled. **(35, 45)**

Response: Ecology agrees and has revised the permit. Language was added to specify that there must be documentation in the SWPPP to support the selection of which discharge to monitor and it must discuss all discharge points and include the relative contribution (volume) of stormwater discharge from each.

Issue: The fact sheet states that, "Failure to sample during a quarter where appropriate rainfall events occurred is a permit violation." The permit does not have this language which is good because a qualifying storm may not result in a discharge that can be sampled. **(29)**

Response: The fact sheet was not as clear as it should have been. However, Permittees are responsible for obtaining a sample when there is opportunity. The point is that it would not be acceptable to be inflexible about when you sample a storm. It would not be acceptable to only sample on the fourth Tuesday of each month and report "no discharge" if there is not a qualifying storm on that day when there were qualifying storms on other days during the month. It would be acceptable to report no discharge if the only qualifying storm(s) in a

quarter happened outside of business hours. Ecology will expect a good faith effort to obtain an acceptable stormwater sample each quarter and if no sample is taken, documentation of why.

Issue: The protocol should include a storm event range with an upper boundary as well as the lower boundary for amount of stormwater in a 24-hour period. It should be "at least 0.1 inches in a 24-hour period but not more than the 24-hour design storm".

Response: Ecology does not agree that there must be an upper boundary. Sampling is not required where there are safety concerns related to the intensity of a storm event but taking a sample within the first hour of discharge of a very intense storm will be acceptable. The development of the stormwater sampling guidance document will consider all the variables and define optimum conditions for taking a sample. Storm intensity will be one of the variables considered.

Issue: The permit should reference the forthcoming stormwater sampling guidance document. Guidance should include ways for the Permittee to obtain weather conditions and the permit should require reporting of weather data during the time the sample was taken. **(36)**

Response: The sampling guidance document has not been completed and therefore not subject to review in connection with this permit. Ecology has therefore decided not to reference the document. When completed, however, it will complement the permit sampling requirements. Ecology does not intend to require submission of weather data during sampling along with sampling results. This would add a level of complexity and time that is not warranted at this time.

Issue: Why are we required to sample within the first hour of discharge when as the fact sheet explains, acute toxicity is based on 3-hour exposure. What is the meaning of "representative sample"? It makes very little sense to use water quality standards that were designed for constant process water discharge and apply them to stormwater which is intermittent and does not behave at all like a constant process water discharge. **(7, 18, 20, 29)**

Response: For the purpose of this permit, "representative sample" is intended to represent the greatest potential for toxicity in stormwater discharges. As has been noted in this comment and many other comments, determining if there is toxicity in the receiving water as a result of stormwater discharges it a fairly complex issue. It is impractical in a general permit like the industrial stormwater general permit to consider all the factors for all the sites. Therefore the permit includes monitoring with a sampling protocol intended to approximate the greatest potential toxicity in the stormwater discharges. Ecology does not agree that water quality standards are the issue. The issue is how we determine if a stormwater discharge exceeds those standards. Focusing on the most toxic episodes makes sense because it will allow Ecology to prioritize site-specific review and spend time on sites that have the greatest potential to cause a water quality violation. A site investigation will typically be required to determine if potentially toxic discharges are actually resulting in a water quality violation.

Issue: Sampling as close to the point of discharge as practical may not make sense (e.g. closed systems and discharges to areas with tidal influence). The permit should be less prescriptive. **(20)**

Response: Ecology believes the permit is sufficiently flexible on where the sample should be taken. The permit language, "as close to the point of discharge as reasonably practical" allows the Permittee to determine what is workable at their site. If sampling where there is tidal influence is not practical and there is another sample point that is practical and representative of the stormwater from the site, the Permittee is clearly allowed to sample outside of the area of tidal influence. The permit allows for common sense on this issue. The Permittee must document where they will sample in the SWPPP monitoring plan and include a discussion of why the sample location was chosen. This is not overly prescriptive.

Issue: We believe there is a real problem with sampling stormwater where it is sheet flow and do not have a "discrete outfall". What does Ecology intend to do in these circumstances? We also do not understand why Ecology has determined to apply sampling and analysis to all facilities. There should be a determination that some sites pose no significant risk and should not be subject to this economic burden. **(25)**

Facilities should not be responsible for the pollutants in stormwater that runs onto their site from other sources. **(20, 25, 45)**

Response: Ecology agrees that obtaining a good stormwater sample from sheet flow will be a significant challenge. Ecology will provide guidance on solving this problem. All facilities are required to conduct sampling and analysis for at least 8 consecutive quarters. Ecology found no satisfactory basis to remove industrial groups or sites from sampling requirements at this time (other than "no exposure"). Ecology will review this position in the next permit cycle, in part based on the data gathered under this permit. Ecology will also conduct independent stormwater sampling and analysis that may help address this issue. The economic burden was kept to a minimum but applied to all facilities (except potentially those that meet the legal test of "extreme hardship fee reduction")

Ecology appreciates the apparent unfairness of holding a Permittee responsible for stormwater pollution from outside of their control. However, run-on stormwater is a civil issue and once the stormwater is on a permitted site, the Permittee is responsible for the quality of the discharge from their site. There is no provision to separate out the influence, be it good or bad, of stormwater that flows onto the permitted facility. This should not be confused with a defined stormwater conveyance system that serves a larger area and passes through a facility. In that case, the facility is only responsible for their discharge to the conveyance system.

Issue: The permit is missing a word (likely "before") in the requirement for where to sample discharge from coal piles. **(41)**

Response: Ecology appreciates the assistance in catching this error. The permit has been revised to include the word "before".

Issue: Monitoring quarters should be changed so that the 3 driest months, July/August/ September are not all in the same quarter. This will make it very difficult to get a sample in that quarter. **(35)**

Response: Ecology agrees that the typical summer drought of the Pacific Northwest does complicate sampling. While the suggestion of changing quarters from calendar-based to quarters defined to break up the 3 driest months into different quarters has merit, Ecology is concerned that it would also add confusion. The permit will retain the calendar-based definition of quarters.

Issue: Sampling should not be required for facilities that demonstrate compliance with implementation of BMPs. If sampling is required, reporting to Ecology should only be required when results exceed the limits. **(32)**

Response: Part of the purpose of sampling is to provide another check on how well the permit is protecting water quality. There is the assumption that implementing best management practices (BMPs) will be protective. Stormwater sampling and analysis is included in the permit to add greater certainty and to test that assumption. Ecology is interested in data that is below benchmarks as well as above benchmarks in order to make a more complete analysis of the effectiveness of the permit in protecting water quality. Ecology expects to do independent testing on selected sites and will be looking at both sites that exceed benchmarks and are below benchmarks. Sampling and reporting will be required by all Permittees during this permit cycle.

Issue: Four quarters of consistent attainment should be enough to suspend additional monitoring. Eight quarters is overly burdensome for no good purpose. **(32)**

Benchmarks for turbidity and pH should not be a set value but should be related to the background conditions of the receiving water. It is unfair for a facility that discharge to low pH waters or naturally turbid waters to be held to the benchmark values in the permit. **(29)**

Compliance with water quality standards at the edge of the mixing zone should be another way to demonstrate consistent attainment. This should not be limited to benchmarks only. **(33)**

Response: The minimum of eight stormwater samples was carefully arrived at. It represents at least two years of sampling and three to four samples each year. Sampling for more than one year reduces the probability of results that are skewed as a result of unusual rainfall patterns such as drought. Three to four samples a year are the minimal amount necessary to provide reasonably representative monitoring. Eight samples are just enough to begin to have some statistical significance.

In order to account for background conditions, the permit would have to include monitoring of the receiving water. That would add greater complexity to the permit, additional sampling burden on the Permittee, and increased workload to track and analyze the data. Since benchmarks are not effluent limits, Ecology finds no compelling reason to implement the requested change. There are trade offs in site-specific versus general conditions and a general permit must apply general conditions to the extent possible in order to be applicable to the larger group.

Compliance with water quality standards at the edge of the mixing zone is required to protect the water quality in the receiving water. It is not a useful means to evaluate the need for ongoing monitoring. It is not useful because it would require significant additional

information to determine compliance and it would likely require additional samples to make a "reasonable potential" determination. The additional monitoring would include the volume of stormwater discharge, the volume of water in the receiving water, the background concentration of pollutants in the receiving water, and the mixing characteristics of the discharge in the receiving water. The benchmark approach has high probability of being protective of water quality standards and is easily implemented. The edge of mixing zone approach is very complex and ill suited to a general permit approach.

Issue: The permit should not allow suspension or reduction of sampling based on "extreme hardship fee reduction. Ecology will have no reasonable way to determine that there is no "significant" environmental risk. **(40, 49)**

Environmental risk assessment should include a review of the literature, maps, soils, ESA species, ground water concerns, wetland, and any other site conditions that may be a concern. **(36)**

Response: "Extreme hardship fee reduction" is defined in Ecology's fee rule, WAC 173-224-090, Small business fee reduction. This exception will only apply to a very small number of facilities (currently about 10 receive this reduction) and Ecology can manage an evaluation for environmental risk for this limited number of Permittees. There will be no change in permit language. Ecology appreciates the list of risk assessment items. Best professional judgment will be applied to the risk assessment.

Issue: The benchmark value for Biochemical Oxygen Demand is too low. Instead of 30 mg/L it should be 100 mg/L. **(35, 45)**

The benchmark value for Total Phosphorus (TP) should be 2.0 mg/L not 0.5 mg/L. **(28)**

Response: Except for the turbidity benchmark value, all the values are from the EPA multi-sector general permit. Ecology will not consider any revision of these values now but will reconsider them when the permit is reissued in 5 years. The data collected under this permit may provide the basis for such reconsideration. Benchmarks are not limits and exceeding the benchmark does not mean there is a water quality violation. But they will allow us to focus attention on facilities that may be exceeding water quality standards. A review of these facilities could result in revision of the benchmark value in the future or additional guidance on BMPs necessary to achieve benchmark.

Ecology regrets the error in listing the benchmark for TP as 0.5 mg/L. It was correctly identified as 2.0 mg/L in the discussion of Chemical and Allied Products and Food and Kindred Products but was incorrect in the table of benchmark values. The final permit will have the correct value of 2.0 mg/L.

Issue: It should be clearly stated that benchmark values are not water quality standards. Facilities that implement a significant process change should have to begin monitoring for attainment anew. **(39)**

Why are benchmark values used when they don't represent water quality standards? What is the basis of the turbidity benchmark considering that the standard appears much more restrictive. The permit should clearly state how benchmarks will be used to assess compliance with water quality standards. **(36, 40)**

What is the basis of 25 NTU for turbidity? The value is very low and will unnecessarily result in compliance risks. It also seems like total suspended solids (TSS) would have been a better indicator of BMP success than turbidity. Background in the receiving water for many sites will be well over 25 NTU during storm events making the benchmark much too restrictive. **(29, 35)**

There should be no suspension of monitoring. Even though a facility goes for a long time without a problem it does not mean that they will not have a problem. Ongoing sampling is necessary to protect the state's waters. **(37)**

The permit should not authorize complete suspension of monitoring based on consistent attainment of benchmark values. Perhaps just reduce the frequency to once a year instead of quarterly. **(38)**

Response: Benchmark is defined in the definition section of the permit and it clearly states that benchmarks are not water quality standards. Ecology agrees that a significant process change should result in new monitoring for attainment of benchmarks. Language was added to the new permit section S4.B., Exceptions, stating that a significant process change will restart monitoring for consistent attainment of benchmark values.

Benchmark values, except for turbidity, are included in the EPA multi-sector general permit which is essentially equivalent to Ecology's industrial stormwater general permit. They are related to water quality standards in most instances but incorporate assumptions to apply generally to a variety of sites. They are used because they provide a useful basis to terminate monitoring where they indicate good performance and to focus attention on doing better where they indicate poor performance. They represent values that are not likely to cause a water quality violation under most conditions. The turbidity value of 25 NTU is an Ecology derived value. Based on field experience, a discharge of 25 NTU or less is very unlikely to result in a water quality violation. Considering background values are likely to be greater than 0 NTU and there will likely be some available dilution, 25 NTU serves the purpose of a benchmark value for turbidity. Ecology will reassess the use of benchmarks and the values used during the next permit cycle. The data gathered under this permit will be part of this assessment.

Ecology water quality standards include a standard for turbidity but do not include any specific standard for TSS. Turbidity is also a water quality concern and it is related to the success of BMPs. Exceeding the benchmark does not mean there is a water quality violation and therefore it does not, by itself, make a Permittee out of compliance with the permit. It could mean that Ecology will do a site inspection to see if there is a water quality violation and it does mean that the Permittee should consider what actions could be taken to reduce turbidity in their discharge. Turbidity will be retained as a basic parameter.

While there is concern that a facility could drift back into poor management after achieving consistent attainment with benchmark values, eight consecutive quarters is rigorous enough to suspend monitoring for the remainder of this permit. Ecology does envision that the next permit will require a "check-in" with some monitoring for all permittees. The issue will be best addressed after we have collected data under this permit and through Ecology independent investigations of industrial stormwater. The permit will not be changed but will be addressed in the next permit cycle.

Issue: Suspension of monitoring for consistent attainment should not be an all or nothing provision. The Permittee should be able to suspend monitoring for any of the parameters they monitor for based on consistent attainment for that parameter independent of values for any other parameter. **(42)**

Response: Ecology agrees that suspension should be allowed independently for each parameter and added language to so indicate.

Issue: Benchmarks seem conflicted with water quality standards. If they are not water quality standards but compliance with standards is required, what does it mean if you exceed the benchmark? What does it mean if you do not exceed the benchmark but do exceed water quality standards? Is there a consequence to exceeding benchmark values? **(35)**

A benchmark for pH of 6.0 to 9.0 is inappropriate. Some receiving waters are naturally below 6.0 and rainfall may also be naturally below 6.0. A pH limit is not acceptable where the rain is very acidic. **(13, 43)**

Response: Benchmarks are intended to reduce confusion. While compliance with standards requires a significant amount of site-specific investigation to determine, benchmarks are straight forward and apply the same to all sites. The benchmark for each pollutant is a reasonably conservative value. That is, it is set low enough that any stormwater discharge that does not exceed that value is very unlikely to result in a water quality violation. A Permittee that has implemented the required BMPs for their industrial activity and is at our below benchmark values has good reason to believe that they are successfully managing stormwater. If monitoring results exceed benchmark values, a Permittee should review their BMPs and look for additional means to apply source control. The Permittee may also need to consider treatment BMPs. Ecology will review data and use it to help prioritize site visits. Sites which exceed benchmark values are more likely to receive a site inspection by Ecology.

The permit does not include a pH limit for all sites. Only those facilities that discharge to waters that are pH impaired or facilities subject to the EPA effluent guidelines (landfills and coal piles) are subject to effluent limits for pH. The benchmark for pH is appropriate because it will typically be protective of water quality and beneficial uses in the receiving water. Benchmarks are a useful general permit tool because they provide environmental protection without additional site-specific evaluation. Since benchmarks are not effluent limits, this generalized approach is not unreasonable.

Issue: Why does the permit include monitoring for hardness as a result of exceeding the benchmark for zinc? Hardness is not a benchmark in the EPA multi-sector general permit. Hardness is not an issue with stormwater management (BMPs) so why is it even included? **(35)**

Airports should not be required to add copper and lead monitoring because of elevated zinc values. While there is evidence that airports may have significant levels of zinc, this does not correlate to elevated levels of copper and lead. **(25)**

The permit requires additional analysis of stormwater samples for copper and lead if two consecutive samples exceed the benchmark for zinc. This is apparently based on Connecticut data and we question the relevance in Washington state. In any event there should be suspension of monitoring based on consistent attainment. **(43)**

Response: Hardness is part of the consideration of metal toxicity and is necessary for determining the potential to cause a water quality violation. As zinc levels exceed benchmark, the potential for exceeding the water quality-based standard in the receiving water increases. The addition of hardness data will help Ecology determine the environmental risk and prioritize site-specific investigations.

Ecology did use the Connecticut data in selecting zinc as the representative metal for monitoring purposes. Ecology will reconsider this decision during the next permit based on data gathered during this permit cycle. Although exceeding the benchmark for zinc does not mean that the discharge will also be high in other metals, there is sufficient correlation to require analysis of lead and copper. Ecology does not intend to exempt any specific industrial activity from this requirement at this time. Language was added to clarify that analysis for the additional metals may be suspended based on consistent attainment.

Issue: The permit must unequivocally state that attainment of benchmarks does not necessarily equal compliance with water quality standards. **(41)**

Response: Ecology agrees that benchmarks are not water quality standards and do not necessarily equal compliance with standards. Language was added to the permit to specifically state that benchmarks are not water quality standards and they are not limits. Ecology believes it is better to point to them as indicators and to state the positive indication, "values at or below benchmark are considered unlikely to cause a water quality violation."

Issue: Visual monitoring should be reported to Ecology. There should be an Ecology prescribed form that every Permittee must fill out. Photos should be taken for each visual monitoring. The permit is so lax on the issue of visual monitoring that there is little that can be considered required. **(34, 36, 37, 39, 40, 41, 49)**

Response: Ecology agrees that there should be guidance and a sample form would be very helpful. Ecology intends to produce and distribute a visual monitoring form that provides a check list of items to be included in visual monitoring. But the permit will not require use of this form as Permittees need to customize the monitoring form to fit their site. Photos could be valuable but Ecology does not agree that they are essential and the permit will not require photos to accompany visual monitoring. Ecology does not agree that receiving and filing visual monitoring reports is the best use of Ecology resources. As pointed out in the introduction, these tasks are very time consuming when applied to all Permittees. Instead, Ecology will only require submission of visual reports on a case-by-case basis where there is evidence of potential water quality violations or insufficient implementation of BMPs.

Issue: The permit requires that people named in the SWPPP conduct visual monitoring. Does this require a person's name or is title adequate? **(20)**

Response: The SWPPP requirements of Special Condition S9 include the requirement to have a "pollution prevention team" identified by person or title. This is the applicable provision and either a person's name or title is acceptable. Whether identified by name or title, the Permittee must be careful to update the SWPPP if the responsible person of position changes.

Issue: The visual monitoring requirements requires monitoring of all "discrete outfalls". Outfalls may or may not be observable by the Permittee and the outfall may include many sources of stormwater besides the stormwater from the permitted industrial activity. The permit must be changed to define visual monitoring in a way that is reasonable and meaningful. Does the Permittee have to take a grab sample to do visual monitoring?

There should be greater flexibility in requirements for points of discharge that do not require sampling as defined by "representative sampling". **(20, 22)**

Dry season monitoring should make allowance for ground water infiltration which should not be considered an illicit discharge. **(22)**

Response: Ecology agrees that the use of "discrete outfalls" is not appropriate for many circumstances. The permit language has been revised to better target the intent of visual monitoring. Permittees must record visual observations at the site where they take a stormwater sample. Visual monitoring of other discharge points may occur at other times. The Permittee must remember that the purpose here is to document the effectiveness of BMPs and make adjustments as necessary. Oil or floating debris entering into a stormwater system that discharges without treatment is not acceptable and occurrences must be documented and actions taken to prevent this contamination of stormwater. Documenting oil going into a collection system that removes oil may be useful but it does not necessarily precipitate an action to identify and remove the source of oil. It does reinforce the importance of taking a stormwater sample after treatment and before discharge to a receiving water. If this is not possible under current treatment configuration, the Permittee needs to consider options that would provide an opportunity to collect a sample.

What should be included in visual monitoring is outlined in the permit but the permit does not dictate the specifics on how this is done. Ecology believes it is not necessary to specify in the permit whether a Permittee must take a grab sample or observe the stormwater from a set distance. Ecology does agree that guidance on conducting visual monitoring is needed (see discussion above on visual monitoring form).

Ecology agrees that ground water infiltration should not be considered an illicit discharge and has revised the permit accordingly.

Issue: Visual monitoring is subjective by nature and things such as "discoloration" or "odor" should not be used to evaluate the effectiveness of control measures (BMPs). Empirical evidence should be required to determine if BMPs need to be added or upgraded. The permit requires visual monitoring for suspended solids and oil and grease. These parameters are inappropriate for visual monitoring. **(45)**

Response: Ecology agrees that visual monitoring is subjective but disagrees that subjective assessments are inappropriate. The permit would have to include additional testing and standards to achieve all the empirical evidence necessary to evaluate all the BMPs that may be necessary for stormwater management. Ecology believes the permit correctly limits physical testing to a limited set of parameters and allows a more subjective but common sense approach based on visual monitoring to address the full spectrum of stormwater management. This provides a combination approach that is practical for the Permittee but with reasonable assurance of good stormwater management when applied.

Ecology agrees that suspended solids and oil and grease are not directly observable and has removed them from the list of parameters for visual monitoring. Visible sheen and turbidity are related and suitable to visual monitoring.

Issue: The permit must make it clear that visual monitoring must be recorded and signed by a person that is authorized under the permit's signatory requirements. Records must be kept as prescribed by law. **(25, 41)**

Response: Ecology agrees and the permit was revised to make it clear that there must be written documentation, that it must be properly signed, and that it must comply with record keeping requirements.

Issue: The permit allows analysis by methods other than those listed in the permit. This seems to leave analysis open to abuse. The wording is unclear. What is meant by "Test methods are the minimum level required."? **(41 45)**

Response: Ecology added language to clearly state that substituted methods must be equivalent or superior and the substitution is by a certified lab. The equivalency statement along with the requirement that this is done by a certified lab should be sufficiently protective. The revised language should also be much more clear on Ecology's intent here which is simply to allow analysis methods that are better than the one required by the permit.

Issue: The permit identifies EPA methods 413.1 and 413.2 for oil and grease. These are outdated methods and should not be used. EPA methods 1664 and 1664A should be used instead. **(27, 28)**

Instead of using the outdated EPA methods for oil and grease, the permit should require a more appropriate measure of petroleum hydrocarbons, the NWTPH(dx) test. **(22, 35)**

Response: Ecology appreciates the correction and would not want anyone to be using the old Freon extraction method. The permit was corrected. Ecology does not intend to go to the more expensive NWTPH test at this time. The oil and grease test is much less expensive and should provide the base level information to meet the purposes of sampling and analysis in this permit. Ecology will conduct independent monitoring with a broad range of parameters including NWTPH to help determine what changes need to be made in the next permit cycle.

Issue: The permit requires Permittees that discharge to listed waters to monitor for all the parameters that are listed. In some cases that is a very large list and it would seem that it could be reduced to monitoring for a few indicator parameters. Monitoring should not be required if there is no reason to expect the pollutant to be present. The requirement to

monitor for parameters listed for impaired sediment quality should be removed. It would be very costly to monitor for all the listed parameters and there is no purpose since there is no defined connection between effluent concentrations and accumulation in the sediment. The permit should say that monitoring is only required for discharges to the listed segment. **(27, 59)**

Ecology must be prepared to tell Permittees if they are discharging to a listed waterbody and what pollutants they must monitor for. It is also unclear how you determine if the discharge is to the listed water. Must there be an easily identifiable conveyance system or would proximity be sufficient? Is it Ecology or the Permittee that determines if there is a stormwater discharge subject to the monitoring for discharges to impaired water? If it is Ecology, the permit should specify when the Permittee will be notified. **(25, 44, 49)**

Response: Ecology is not prepared to offer "indicator" parameters or determine when a pollutant will not be present for listed pollutants. Monitoring may demonstrate that "indicator" parameters are a viable option. It may also demonstrate that certain industrial activities have no risk of adding certain pollutants. These issues will be better addressed in the next permit cycle based on data gathered in this permit cycle.

Ecology did remove the requirement to monitor for parameters that may contribute to sediment quality standards. Since Ecology cannot define the connection between effluent concentrations and sedimentation, only monitoring for total suspended solids will be required.

The permit does include a definition for waters listed as impaired and that definition clearly states that it is only the listed segment that applies. No additional language will be added to the body of the permit.

Ecology will notify Permittees of any additional monitoring for pollutants as a result of discharges to listed waters. This response depends in part on receiving the required identification of receiving waterbody and declaration of mixing zone form as required by the permit. Notification by Ecology is an implementation issue and the permit will not specify a specific date but Ecology will respond as quickly as possible after receiving identification of the receiving water.

The discharge to a listed water must be a surface water discharge, that is, it would not include natural underground flow. It would include all manmade stormwater conveyance systems and any identifiable surface flow from the industrial activity to the listed water.

Issue: The way the permit reads is sounds like a Permittee would not be required to monitor for TMDL limited pollutants unless the TMDL specifically requires that for stormwater. The permit should require monitoring for any pollutants where a TMDL sets a load allocation or concentration limit regardless of whether stormwater was listed as a significant contributor. **(41)**

Response: Ecology agrees that new dischargers should monitor for any pollutants where a TMDL sets a load allocation or concentration limit. The suggested language revision was made.

Issue: The permit only allows suspension of monitoring for listed parameters if analysis consistently shows that the pollutant is not detectable. This is an overly restrictive and pollutant levels that do not demonstrate any reasonable potential to cause or contribute to a water quality violation should be sufficient. There should also be flexibility to demonstrate that stormwater is not related to the problem and monitoring should not be required. The permit would apply zero detect to pH. That does not make sense. **(20, 29, 52)**

Response: Ecology agrees that a pollutant could be detected and still be consistently at a concentration that has no reasonable potential to cause or contribute to a water quality violation. Language was added to the permit to allow this demonstration. Ecology is not prepared at this time to add additional flexibility to remove monitoring based on an

argument that stormwater is not contributing to impairment. This becomes a level of complexity that can not be supported but should be reviewed in the next permit cycle, building on data gathered under this permit.

Ecology agrees that the permit fails to define an appropriate basis for suspending monitoring of pH where monitoring is required because the waters have a pH impairment. Language was added to correct this. The language is slightly different then that used for suspension of pH under benchmark. The range of 6.0 to 9.0 is an appropriate benchmark but would not be applicable to pH impaired waters. Suspension is based on eight consecutive quarters where the pH is does not fall outside of the water quality-based range of 6.5 to 8.5 (freshwater) or 7.0 to 8.5 (marine).

Issue: Ecology should have been more inclusive in monitoring requirements and should have specified all the parameters identified by the EPA multi-sector general permit (MSGP) for each industrial group. Ecology should include all the parameters of the MSGP for additional metal sampling, timber products and paper industries, chemical and food industries, and the primary metals and salvage/recycling industries. **(39)**

The Clean Water Act mandates that NPDES permits include sufficient monitoring requirements to determine whether effluent limitations are being violated. It is unclear how the permit meets this requirement, particularly when mixing zones are authorized. **(41)**

Response: A primary objective of revising the industrial stormwater general permit was to provide tangible evidence of how well the permit requirements were working in terms of managing stormwater for the protection of the state's waters. Ecology reviewed the sampling requirements in other permits including the EPA and Connecticut. The conclusion was that a targeted approach that focused on a limited set of parameters (pollutants) would meet the goal of the permit. A limited set of pollutants (base level) simplified the permit, limited the cost to the Permittee, and provided the tangible evidence. A few additional pollutants were required for specific industrial groups where there was a high environmental risk or there were pollutants that were not likely to be linked to the base level pollutants. Ecology is not convinced that monitoring for additional pollutants would add information not available from the base level pollutants for the protection of the state's waters.

The stormwater pollution prevention plan (SWPPP) and associated best management practices (BMPs) are the permit requirements (limits) that are necessary for a permitted facility to achieve compliance with water quality standards. In addition to maintaining a copy of the SWPPP at Ecology, the permit requires each facility to conduct stormwater sampling and analysis and to report the monitoring results to Ecology. The base level pollutants were picked to provide the information necessary to determine how well a site is doing. Turbidity is a good indicator of how clean the site is. Dirty sites result in dirty, turbid, water. Since many of the pollutants of concern in stormwater cling to dirt particles, turbidity provides a good overall indicator of potential pollutants in stormwater. Likewise pH is a good indicator of whether stormwater is being contaminated. Oil and grease was included because mechanized equipment is pervasive at industrial sites and represents a likely source of petroleum related pollutants. Metals are also a common contaminate and

data indicated that zinc would be a very good indicator for the presence of metals. Collectively they form a good measure of stormwater management and compliance with the SWPPP requirement.

The application of a mixing zone does make the final determination of a violation of standards in the receiving water more complex. However, the use of benchmarks provides a very easy to apply first cut. A violation of standards is highly unlikely where a Permittee does not exceed the benchmark value. Sites that exceed the benchmark value can be required to submit additional information to demonstrate compliance (e.g. SWPPP updates) or be subject to a site visit to determine compliance.

Issue: The permit requires monitoring for nitrate/nitrite for the Chemical and Allied Products, Food and Kindred Products but does not require analysis for ammonia. We are therefore confused on why ammonia is listed under the monitoring suspension provision and nitrate/nitrite is not.**(24, 49)**

Response: Ecology is very grateful that this error was pointed out. Nitrate/nitrite monitoring is correct and ammonia was supposed to have been replaced by nitrate/nitrite in the monitoring suspension statement. The permit has been corrected.

Issue: An airport should be allowed to develop a single sampling plan that applies to the whole site and individual activities should not be required to have a separate plan and conduct their own sampling. This is a safety issue as well as a more reasonable approach to sampling. The permit should explain the sampling requirements as they apply to co-located facilities such as airports. The separate facilities do not typically discharge to a receiving water but discharge to stormwater conveyance system owned and operated by the airport. Where are the responsibilities here? **(17, 25)**

Response: There is nothing in the permit language that would prevent an airport from developing a single sampling plan. However, the plan must include sufficient sampling so that each individual permitted activity can comply with the permit requirement to monitor their discharge. The Permittee will remain the liable party and must incorporate the airport wide monitoring plan as applicable to their site into their stormwater pollution prevention plan. There is no real difference between a permitted facility at an airport discharging to an airport stormwater collection and discharge system and a facility in an urban area that

discharges to the municipal stormwater collection and discharge system. In both instances the permitted facility must capture a stormwater sample before it commingles with the larger stormwater system in order to characterize the quality of their stormwater discharge.

Issue: The permit does not adequately describe the period that deicing may take place. Instead of the 3-month period it should include October through the end of April. **(25)**

Response: Ecology agrees and has modified the permit to require sampling at any time from October through April when deicing activities are occurring.

Issue: If Permittees will be allowed to conduct turbidity and pH sampling with field meters and are not required to be lab certified, then Ecology needs to provide assurance that the Permittee is calibrating their meter correctly and that the Permittee has an acceptable meter. **(37)**

Why does the permit include parameters that are not subject to lab accreditation when they are parameters that the permit does not include for monitoring? **(35)**

Response: Permit language was added to specify that meters used for analysis on site must be properly calibrated and maintained according to the manufactures requirements. Independent verification of all meter use by Ecology is impractical but would be appropriate when conducting a technical assistance or site compliance inspection.

The permit includes the full text of monitoring that can be exempted from laboratory accreditation for completeness. It is possible that Ecology could require monitoring of one of the listed parameters by Order on a case-by-case basis. Including them in the permit removes any question of whether the Order can also authorize the use of a field meter without lab accreditation.

Special Condition S5 – Reporting and Recordkeeping Requirements

Issue: Reporting should require submission of visual monitoring reports. Ecology should provide an opportunity to submit documents electronically. **(36, 40)**

Response: Ecology will pursue electronic submission of documents wherever practical and this could include electronic version of the SWPPP. Ecology does not agree that across the board reporting of visual monitoring should be required. The staff time required to receive and file these reports for all facilities would not warranted by environmental outcomes. Instead, Ecology will only ask for these reports on a case-by-case basis.

Issue: Reporting should be changed from quarterly to annual reporting. The permit should include more than thirty days after the end of a quarter to submit the monitoring report. Particularly with a large number of analyses resulting from this permit, laboratories may not be able to complete all the reports in 30 days. **(24)**

Permit language requires the Permittee to assure that Ecology "receives" the discharge monitoring report within 30 days. The Permittee has no control over mail services and the language should be changed to postmarked by or sent by. **(49)**

Response: As discussed earlier, Ecology does not agree that annual reporting would be a positive change in the permit. Ecology does agree that there additional time can be provided for submitting the report. The reporting period was changed from 30 days to 45 days following conclusion of the monitoring quarter. Language was also changed from "received by" to "sent by".

Issue: Electronic submission of discharge monitoring reports (DMRs) is a good idea but Ecology must resolve the issue of a legal signature. **(39, 41)**

Response: Ecology agrees that allowing electronic submission of DMRs must include a legally binding signature procedure. This issue has not been resolved at this time but does not require a permit revision. This can be addressed through permit implementation.

Issue: The permit should require records of inspection and maintenance of BMPs. The recordkeeping requirements should specifically require retention of inspection and maintenance logs. **(42)**

The recordkeeping section should clarify what records must be kept and it should reconcile the apparent discrepancy between the 5-year requirement of the current permit and the 3-year requirement of the revised permit. **(25)**

The recordkeeping section should include additional requirements to record weather data and photo documentation for stormwater sampling. **(36)**

Response: Reporting and recordkeeping requirements apply to all records and reports required by the permit. The stormwater pollution prevention plan (SWPPP) requires ongoing documentation of compliance with the SWPPP. Language was added to the inspection and recordkeeping portion of SWPPP requirements to make this more clear.

Ecology regrets the confusion caused by the change in records retention from 5 years to 3 years. Five years of retention is the correct number. The problem results from a difference between the regulations governing individual permits (3 year retention) and general permits (5 year retention). The permit was corrected, changing the 3 year record retention to 5 years.

Ecology does not believe there is a compelling reason to expand this section to include requirements for collection and retention of additional records beyond those already included in the permit.

Issue: The additional monitoring requirement requires the Permittee to report any additional monitoring of pollutants that meets the requirements of test procedures identified in Special Condition S4. We believe that any sampling that does not meet the sampling protocol does not meet the requirements of test procedures and reporting is not required. **(20)**

Since the permit authorizes the use of test procedures that are equivalent or superior to those required by the permit, does that mean that any additional testing using different but equivalent/superior test methods must be reported? **(41)**

Response: This permit provision is intended to prevent the Permittee from doing additional analysis and then picking and choosing what will be reported. The intent is that any monitoring that meets the monitoring requirements must be included in the discharge monitoring report (DMR). "Test procedures" specifically refers to specified analytical methods which would include analysis by equivalent/superior test methods. It could also include the sampling protocol. Ecology is expecting that stormwater sampling will typically meet the intent of the protocol and not require resampling. Analysis of a stormwater sample that would be wholly unacceptable because it failed to meet the protocol can be excluded from the DMR report.

Issue: Permit language only allows 5 days for non-compliance notification and there is no indication of threshold for determining what is non-compliance. **(20, 25)**

Response: The permit was revised to allow more time for submitting the non-compliance notification, 30 days, and to specify that it applies to any non-compliance that could result in a discharge of pollutants in a "significant amount". Significant amount is defined by the permit and properly identifies the threshold for reporting non-compliance. It should be noted that it does not just apply to non-compliance that results in a discharge but "could result" in a discharge. This would include any loss of best management practices (BMPs) or failure to maintain BMPs that might result in a discharge of pollutants in a significant amount. The language was also revised to make it more applicable to stormwater, eliminating actions that would apply to process water but not stormwater.

Issue: S3.E.3. allows Ecology to allow additional time. This is an objectionable clause since it allows time frames to change without any opportunity for public comment and at the very least should require a written authorization by Ecology. **(41)**

Response: The permit was revised to allow more time for the response, up to 30 days, unless Ecology requests less time. There is no extension provision beyond the 30 days.

Special Condition S6 – Conditional "No Exposure" Certificate

Issue: Electronic submission of the "no exposure" form must meet federal regulatory signatory requirements. **(41)**

Response: Ecology has no intention of implementing electronic submission of this form if it will not meet federal requirements applicable to this procedure.

Issue: How can a facility determine if they meet the conditions of "no exposure"? How would you know that there is no reasonable potential to cause or contribute to a violation of water quality standards? What conditions might result in significant levels of contaminants from a roof? The permit discriminates against large land owners by limiting no exposure to the entire facility and not allowing for no exposure to individual outfalls. **(35)**

Response: Ecology will provide instructions for completing the application for Conditional "No Exposure" Certificate. However, the rule of thumb should be that if you do not know if you may cause or contribute to a violation of water quality standards, it is likely you do not qualify for a conditional no exposure certificate. Galvanized or copper roofs are potential sources of significant levels of zinc and copper respectively. Contaminants from facility air

emissions will typically not be considered a source of significant levels of contaminants as long as they are consistent with air emission regulations and any emission control devices are properly maintained and operated. "No exposure" would not be applicable where there are visible deposits of residuals near roof or side vents. Likewise "no exposure" would not be applicable where there is visible track out of pollutants from covered area (e.g. by vehicles or wind).

Permit coverage is issued to an entire facility. It does not make sense to try to apply "no exposure" to a portion of the facility. The purpose of "no exposure" is to allow facilities that qualify for "no exposure" to be exempt from obtaining a permit. Since a facility with some exposure will require a permit, there is no exemption to be gained. The permit already allows a facility to minimize permit requirements for portions of the facility where there is no exposure. No exposure amounts to a source control measure and documentation of the no exposure in the SWPPP would be the primary requirement. Stormwater sampling would not be required where the Permittee can demonstrate that sampling at one or more other outfalls meets the intent of the permit.

Issue: S6.C.1. should be revised to address stormwater contact with contaminated ground under covered areas, but not necessarily materials and machines. **(41)**

Response: Ecology agrees and revised the permit to included the recommended change.

Issue: There is data demonstrating that galvanized roofs can cause significant levels of zinc contamination and copper roofs can result in copper contamination. The permit should specifically identify these potential sources of contamination. **(42)**

Response: Ecology agrees with this comment and has revised the permit to specifically identify copper and galvanized roofs as potential sources of significant levels of pollutants.

Issue: The permit grants a "no exposure" certificate automatically after 60 days unless Ecology responds in writing. This is unacceptable and no one should receive a no exposure certificate unless Ecology makes a written determination to grant it. Just filling out a form is not sufficient. The minimum conditions for granting no exposure should include a field inspection. "No exposure" should require proof that there is no contamination and that the facility has implemented appropriate best management practices. **(8, 10, 11, 34, 36, 38, 39, 40, 41, 49)**

The "no exposure" certificate should not be valid for 5 years without ongoing reporting to Ecology that demonstrates compliance with the "no exposure" requirements. **(1, 49)**

Response: Ecology is somewhat confused about the concerns over the "no exposure" certificate procedure as it represents a significant step forward in terms of addressing facilities that are not under permit because there is "no exposure" of their industrial activities to stormwater. The current permit has an exclusion from the permit based on a condition of "no exposure". Although it is limited to facilities that fall under the "light industry" category, the current permit does not require these facilities to identify themselves or in any way certify that they meet the conditions of "no exposure". Under the revised permit, these facilities will now have to actively apply for "no exposure". They will be identified and they must certify that they meet the conditions of no exposure. This group

represents a very large number of facilities, potentially as many as 17,000. Requesting additional information and a written determination by Ecology could result in several thousand hours of work. Automatically granting conditional no exposure certificates where appropriate is not only acceptable but necessary to avoid diversion of staff from more important tasks.

Ecology imagines that the concerns are more focused on the extension of the "no exposure" option to industrial activities other than "light industry". All industrial categories are now eligible and may apply for exclusion from the permit based on "no exposure". Ecology appreciates this concern and the permit includes the necessary safeguards to minimize risk of inappropriate application of the "Conditional No Exposure" Certificate. Ecology can by letter eliminate the automatic granting of "no exposure". Facilities currently under permit and changing to "no exposure" are one group that will likely receive such a letter. Likewise industrial activities that fall under an SIC code that is highly unlikely to qualify for "no exposure", such as a log yard, would receive a letter. Any concern from the public is also likely to result in the applicant receiving a letter that eliminates the 60-day automatic provision. Ecology will deny applications that do not meet the minimum requirements based on responses on the application form. Ecology will post a list of applicants for "no exposure" exemption on an Ecology web page. This listing will include their application date and a status that indicates if they are under the 60-day automatic provision or a letter was sent placing their application on hold pending an Ecology review. There will also be a listing of facilities that have received the Conditional "No Exposure" certificate.

Permit language was revised adding "conditional" to the title and specifying that conditional means that the facility must be consistent with the "no exposure" requirements and must remain consistent with those requirements. The conditional "no exposure" certificate conveys to Ecology the right to enter and inspect the facility and facilities must reapply every five years. The permit already requires a change in status if the facility changes in a way that results in exposure. An ongoing (e.g. every 6 month) recertification adds little and has the potential to divert Ecology resources to an oversight activity of minimal environmental consequence. Ecology believes the permit language is appropriate and adequate.

Special Condition S7 – Compliance with Standards

Issue: The water quality standards (criteria) should not be applied to stormwater. They are based on science that considered steady state discharges (process water) and is not applicable to episodic storm events that vary in frequency, duration and intensity. **(18, 29)**

The bold permit language that requires compliance with standards is over stated and sets up Permittees for third party lawsuits. This statement is more rigorous then the benchmark system authorized by the permit. **(18, 25)**

Response: Ecology does not agree that water quality standards are not applicable to stormwater. While it may be more difficult to demonstrate when stormwater will cause an exceedence of standards, that does not mean, for example, that the toxic levels established by the standards do not apply. It should not be assumed that storm events inherently increase the available dilution in the receiving water. In areas where the watershed has a

high percentage of impervious surface there may be little stormwater that is not subject to pollutants from man's activities. After a period of drought, it is also likely that "natural" areas will absorb most of the stormwater and discharge little to the receiving water. Under these conditions, stormwater from impervious surfaces will dominate the increased stream flow. The potential for stormwater to result in receiving water toxicity and loss of beneficial purpose is significant and not to require compliance with standards would be a failure to apply the law, as well as a failure to provide reasonable protection to the environment.

There is nothing particularly bold about the straight forward statement requiring compliance with standards. The permit simply states the legal requirement. Ecology fails to understand how this makes a Permittee more vulnerable to third party lawsuits or how it is inconsistent with benchmarks. While water quality criteria may be less than the benchmarks, a violation of standards includes consideration of available dilution. Under most conditions, benchmark values would not be a violation of standards and that is why they are considered protective.

Issue: The permit does not adequately define what is compliance and what is out of compliance. If a facility is out of compliance the public should be notified by Ecology along with the action Ecology will take to bring the Permittee into compliance. Permittees should be required to apply the new stormwater manual to get back into compliance. The permit should specifically identify how Ecology will assess if a facility is in compliance and what enforcement actions will be taken if a facility is not in compliance. **(36, 37)**

Response: A permit is written to identify who the permit covers, how an entity obtains permit coverage, and what requirements apply to those under permit. The permit does not provide guidance on how to comply with the permit and it does not dictate what enforcement actions will be taken for noncompliance. The fact sheet provides additional clarification and throughout the permit life cycle, Ecology assists those with questions about compliance through permit implementation forms and directions, guidance documents, and technical assistance visits. Portions of this response to comments address the intent of permit requirements and become part of the record on what is expected for compliance with the permit. The permit does specify that all Permittees must use the latest Ecology stormwater manual when selecting BMPs to come into compliance.

Ecology appreciates the public interest in assuring protection of water quality in the state's waters. At this time, there is no procedure to list all water quality enforcement actions associated with this permit. However, Ecology does track enforcement actions and the public can request access to that information. However, many actions, such as technical assistance, will not appear on an enforcement report.

Issue: Where is the point of compliance if the permitted facility discharges to a stormwater conveyance system? What is considered "waters of the state" and how does that relate to the point of compliance? What is a treatment system and what are waters of the state? **(20, 45, 51)**

Response: The permit was revised to address the issue of point of compliance. The general rule is that the point of compliance is at the receiving water and receiving waters are waters of the state that have the typical beneficial uses established in chapter 173-201A WAC. Language was added to define a stormwater conveyance system. The point of compliance is

not at the point of discharge to the conveyance system, it is where the conveyance system discharges to a receiving water. A treatment system would be considered the same as a conveyance system. The point of compliance would be where treated water is discharged to a receiving water.

For monitoring purposes, the stormwater sample must typically be taken before it commingles with other stormwater in the conveyance system unless all the stormwater in the conveyance system is from the permitted facility. Compliance is based on consideration of the characteristics of the stormwater where it discharges to the conveyance system and the characteristics of the receiving water where the conveyance system discharges. What this means is that if the conveyance system discharges to an impaired water, stormwater discharges to the conveyance system are treated as if they discharge directly to the impaired waters and are subject to end-of-pipe limits for the listed pollutants. Likewise, where impairment is not the issue, compliance with standards will consider the characteristics of the stormwater discharge where it discharges to the conveyance system and available dilution in the receiving water at the point where the conveyance system discharges.

Issue: Compliance should not be established at the edge of the mixing zone but should be applied to "end-of-pipe" sampling with consideration for dilution. **(49)**

There is no permit requirement to determine dilution for each facility. What does it mean that compliance with standards will be determined after consideration of available dilution? How does dilution apply to water quality standards that are not numerical such as aesthetics or beneficial uses? **(39, 41)**

Response: Ecology does not disagree with the comment that compliance should be based on end-of-pipe samples and consideration of available dilution. However, in order to apply dilution, the permit must identify the size of the mixing zone. It will also require additional site-specific information to determine dilution.

The federal regulations direct the permitting authority (Ecology) to consider dilution if appropriate when determining if there is a water quality violation. This permit provision simply applies that directive. Ecology appreciates the distinction made concerning aesthetics and beneficial uses such as migration. The concept of dilution is intended to apply to numeric standards where dilution changes the concentration of the pollutant within the mixing zone. The permit was revised to direct the application of dilution considerations to numerical standards.

Issue: The permit improperly limits the application of a mixing zone. Ecology should not require end-of-pipe compliance with water quality standards. Consideration of available dilution should be replaces with "in a manner consistent with chapter 173-201A WAC." **(45)**

Response: This issue was discussed for a similar comment under the S3 heading and a mixing zone will not be applied to discharges of pollutants of concern to impaired waters. The purpose of defining a mixing zone is to identify the area in the receiving water where dilution may occur. Ecology has set these boundaries for the standard mixing zone. The permit also allows the Permittee to apply for an expanded mixing zone. This is a consistent application of the mixing zone provisions of chapter 173-201A WAC within the context of

a general permit. Although it is technically possible to determine compliance based on sampling at the edge of the mixing zone (which in fact is a direct measure of dilution), it will most often not be practical. It will typically be necessary to calculate dilution based on the receiving water and the allotted mixing zone dimensions in order to determine if there is a water quality violation.

Issue: Ecology should not authorize a mixing zone. **(36)**

Response: Ecology does not agree. A mixing zone is legally available and traditionally applied by Ecology when appropriate. Except for discharges of pollutants of concern to impaired waters, dilution will typically be available and a mixing zone can be authorized.

Issue: A storm that exceeds the design storm event should not allow a Permittee to be out of compliance. Ecology should remove the provision that says there is no permit violation when a treatment system fails as a result of an exceptional storm. This should only be an issue of Ecology's enforcement discretion. **(1, 8, 34, 37, 39, 40, 41, 47)**

The Permittee should not be responsible for any system failure when storms exceed the design storm. Permittees should not be required to file a noncompliance notification when the storm event exceeds the design storm. The design storm exemption is an absolute necessity. **(20, 35)**

What does "fully functional" in S7.C. mean as applied to stormwater treatment systems? **(22)**

Response: Ecology has determined that the S7.C. provision should be removed. There remains a concern about stormwater and compliance with standards. The reality is that there is no upward boundary on how much rain can fall in a given period. Designing for an indefinable target does not make sense. Nonetheless, Ecology agrees with the commenters that took issue with this provision. However, Ecology has modified the by-pass provision of S8 so that it better reflects the realities of stormwater discharges and accommodates the intent of S7.C.

This issue is also perplexing because high volume, high intensity storms are likely to result in conditions that are not favorable to stormwater sampling anyway. Exceptional storms are not likely to result in a determination of a water quality violation because there will not be sampling of the event sufficient to support the determination. So while removing S7.C. may seem to increase Permittee liability, the practical reality suggests that liability is limited. Ecology applies enforcement discretion and a violation that are solely the result of an exceptional storm is an unlikely target for enforcement.

Issue: The permit should just define what the design storm is and not reference the stormwater management manual. We suggest the 24-hour storm with a 6-month return frequency. **(45)**

Response: Ecology does not agree that this complex issue should be simplified to a single definition of design storm. Stormwater management must be properly sized according to its purpose and reasonable expectations. Conveyance systems for example typically require greater sizing in order to avoid flooding. Ecology manual sizes treatment systems

differently depending on whether they are flow or volume based treatment systems. Since the Ecology stormwater management manual is the source of management practices, it is the appropriate reference for sizing requirements and the applicable design storm.

Special Condition S8 – Operation and Maintenance

Issue: This permit provision suggests that redundant structural source control or treatment BMPs might be expected and required. The permit should either eliminate this provision or define when it applies. **(45)**

Response: Ecology does not agree that this provision requires greater clarification. It is the Permittee's responsibility to identify the source control and treatment facilities that are required for an industrial activity. These systems must be engineered to assure compliance. Part of engineering should be a determination of probable failure rate. This provision requires the Permittee to consider the potential failure rate and to provide backup or alternate procedures when necessary to assure compliance with the permit. The rest of this provision addresses procedures where bypass is planned or unavoidable.

Issue: This provision defines bypass procedures for stormwater treatment facilities. This provision must take into account design criteria that deliberately bypass stormwater based on flow rate or volume. **(22)**

There should be explicit recognition that stormwater flow quantities in excess of the design storm may be bypassed. **(45)**

Response: This provision was revised so that it more specifically addresses the issue of stormwater discharges. The language in the draft permit was written primarily for process water discharges. Ecology agrees that the bypass language should include the context of the design storm. The revised language prohibits the bypass of stormwater below the applicable design storm criteria for stormwater management. The revision states that an enforcement action will not result from the intentional bypass of stormwater consistent with applicable design criteria and part of an approved management practice in Ecology's stormwater management manual.

Special Condition S9 – Stormwater Pollution Prevention Plan (SWPPP)

Issue: S9.A. references the wrong general condition. **(29)**

There should be some threshold for what represents a SWPPP modification that requires an authorized signature **(25)**

Response: Ecology appreciates the assistance in catching this mistake. It is corrected to identify the correct reference to signatory requirements.

Ecology agrees that revising typos in the SWPPP or improving the quality of the map or other changes that are more administrative in function then modification of the SWPPP

should not invoke the authorized signature requirement. This will require an application of the "reasonableness test" but the permit was revised from "all modifications" to "significant updates".

Issue: Ecology must review and approve the stormwater pollution prevention plan (SWPPP). Failure to do so makes this major permit requirement meaningless. **(36, 40)**

Response: Ecology does not agree that all SWPPPs must be reviewed by Ecology. The development and implementation of the SWPPP is the responsibility of the Permittee. Ecology does not intend to spend the staff resources it would take to review all of these documents. However, there is opportunity for review of the SWPPP and this will be applied by Ecology as appropriate. When Ecology field staff conduct a site investigation they will typically review the SWPPP. This is the most effective time to review the SWPPP because the words can be related to actual on-site conditions. Sampling and analysis provides another trigger for review of the SWPPP by Ecology. Ecology believes that a focused approach on review where it is most relevant is a much more effective use of staff resources to provide environmental protection.

Issue: A facility such as an airport may have a number of industrial activities, each with their own permit coverage. However, it makes sense to develop a SWPPP for the whole site that integrates all the activities. It is unclear if this approach would meet the requirements of the permit. **(17)**

When activities are co-located within a common function, e.g. airport, must all parties have permit coverage or can there be one permit? They typically discharge to a common stormwater system and not to a receiving water. **(25)**

Airports are not all the same and one set of requirements for BMPs is unreasonable. Airports should be authorized to determine what is appropriate at their site and to only implement BMPs that make sense. **(17)**

Response: The permit does allow for "co-permittees" and this may be useful at a location like an airport. More importantly, there is nothing in the permit that would prevent an integrated approach to developing a SWPPP at a location such as an airport. The SWPPP must identify each industrial activity and meet the permit requirements for BMPs applicable to each industrial site. Each site must be able to easily identify their requirements and each Permittee is ultimately responsible for meeting the terms and conditions of the permit. Ecology finds no need to alter the permit and to authorize a collective approach. However, discharging to a common stormwater collection system does not remove the responsibility of the individual site to monitor (or have someone monitor) their stormwater. There is no real difference between the airport collection system and a municipal collection system and the same rules apply.

There are "industry standard" basic BMPs that must be included. These include operational and source control BMPs. There is also the expectation that BMPs will be tailored to site-specific conditions. The "facility assessment" is a basic component tailoring BMPs to a facility. Ecology believes there is sufficient flexibility in the permit language to allow the

requested tailoring as long as there is adequate documentation in the SWPPP for how the management practices were selected and how they meet the permit requirements for stormwater management,

Issue: S9.A.4. includes the objectionable "unless otherwise authorized by Ecology in writing" language that allows Ecology to modify permit requirements without public knowledge or participation. **(36, 39, 41)**

The time frames for planning and implementing best management practices (BMPs) in this provision, particularly those that require capital improvements, are much too short. At least 18 months should be allowed. It is unclear whether the time period for completing BMPs begins after the completion of a plan or concurrently with completing the plan. The schedule for implementing BMPs here provides a much shorter time frame then is allowed in the compliance schedule of Special Condition S2. Shouldn't the requirements here provide the same compliance schedule? **(20, 24, 42)**

The use of the word modification seems to imply that adding additional BMPs as a result of visual inspection or Ecology request would constitute a modification of coverage. It is unlikely that facilities will want to initiate a modification of coverage and will be less likely to upgrade BMPs and apply adaptive management. **(29)**

How will Ecology "notice" a Permittee that additional or enhanced BMPs are required? Will this be an enforceable action? The use of visual monitoring as a trigger requiring modification of addition of BMPs is too ambiguous to be practical. Visual monitoring is subjective so how would you arrive at a determination that there is a potential to discharge pollutants of a significant amount. **(45)**

Response: The permit includes time frames for implementing BMPs that Ecology believes are reasonable under typical conditions. The permit allows additional time where there is a justifiable reason such as more complex engineering considerations. Ecology does not believe these actions require a defined public process such as a modification of coverage. The inclusion of the process for requiring BMP improvements in the permit is sufficient public notice of how Ecology will exercise best professional judgment in administering this permit.

The time frame for adding or improving BMPs is shorter then the time allowed for developing and implementing a SWPPP identified in Special Condition S2. S2 applies to existing facilities that have not been under permit coverage. These facilities are not just adding a BMP or improving one but are beginning from scratch. The difference in time frames is recognition of the difference in scope of the tasks. It is reasonable for Ecology to require a quicker response time from a site that is expected to have the basic BMPs in place.

Ecology agrees that "Modifications" was not the best choice of words and it was revised to "Enhanced/Additional Best Management Practices (BMPs)". Ecology hopes that the revision clarifies the intent of this permit provision which did not intend to trigger modification of coverage under this permit provision.

Ecology has an array of options available to "notice" a Permittee of the need to add/improve BMPs. The permit does not dictate the response because this is better handled by best professional judgment that will be applied by the Ecology permit manager. Typically Ecology will issue a technical assistance report with deficiencies noted. If this does not result in improvements at the site, Ecology may issue an Order. Ecology will discuss this and other permit implementation/enforcement issues to provide consistency in achieving compliance with permit requirements.

Ecology does not agree that visual monitoring is too subjective and ambiguous to be a useful trigger for determining the need for additional or modified BMPs. Turbidity is observable and if visual inspection reveals turbid stormwater from materials stored on-site, it is reasonable to expect the Permittee to address this with source control if possible and if not to consider treatment BMPs. Visual monitoring applies a common sense approach to stormwater management. Ecology will provide assistance in the form of a check list but there is significant opportunity for the Permittee to demonstrate their commitment to stormwater management by developing their own list of visual indicators that can be used at their site to assess how well stormwater management is work. Ecology does not believe that subjectivity is the issue. The issue is identifying how to productively apply visual monitoring. It may not produce the "hard" numbers of stormwater sampling, but it is less expensive and in collaboration with the stormwater sampling and analysis should result in good stormwater management.

However, Ecology does agree that there may be grounds to dispute decision. Washington state law (RCW 43.21B.230 and 43.21B.310) provides for appeal of Ecology actions. However, it is hoped that disputes can be resolved prior to a formal appeal. Special Condition S13., Dispute Resolution was added to the permit to encourage informal options and formally acknowledge the right of appeal.

Issue: SWPPP requirements should include a title page that identifies when the SWPPP was last updated and by whom. **(36)**

Response: Ecology does not believe that the requested SWPPP enhancement warrants a permit revision. Ecology is currently in the process of updating the SWPPP guidance document and the suggestion will be included in that process.

Issue: Ecology should maintain a "current" copy of the SWPPP at each regional office. This should include updating the SWPPP. Ecology should require Permittees to submit an electronic copy of their SWPPP. **(5, 8, 10, 36, 39)**

Permittees should be required to submit with the SWPPP a copy of any other documents included in the SWPPP by reference. **(39, 41)**

The Permittee should be allowed, wherever applicable, to include by reference other documents that address SWPPP requirements. The permit should not require inclusion of the referenced documents unless specifically requested when submitting the SWPPP to Ecology. **(20)**

Compliance with standards does not provide a solid basis for determining if a facility must update BMPs using the new Ecology manual. How do you measure compliance with standards? The permit should make it clear that applying the new technical standards during new development and redevelopment only applies to the area under development. **(35)**

The permit poorly states the provision to submit a copy of the SWPPP or updates to the SWPPP upon request by Ecology. The permit seems conflicted on whether the Permittee must submit a copy of their SWPPP to Ecology or not. It seems to imply that Ecology will have a copy of the current permit but does not require submission of the SWPPP and updates. **(25, 42)**

Mandatory submission of SWPPP updates should not be required. **(44)**

Response: Ecology does not agree that the staff time required to continually receive and file SWPPP updates is warranted by environmental gains. With the addition of sampling and analysis, Ecology has a new tool to identify potential problem sites. The permit provides language to request these updates based on cause. Sample results and public concerns are sufficient triggers to focus requests for this information to sites where it will do the most good.

Inclusion by reference is intended to reduce the volume of the SWPPP where it is appropriate. At this time Ecology does not intend to require all referenced documents to be included with the SWPPP. They can be requested on a case-by-case basis where there is cause. However, the use of referencing is not intended to allow wholesale exclusion of SWPPP components because the Permittee has produced separate documents. An employee training plan should not be excluded because it exists as a separate documents. The intent of inclusion by reference is to reduce redundancy that would result from including information that the facility has already prepared to meet other regulatory requirements. The permit example of a pollution prevention plan prepared under the Hazardous Waste Reduction Act illustrates the intent of this permit provision.

Ecology agrees that "compliance with standards" is not an easy measure to apply to determining if BMP updates are required. However, the permit must be clear that where there is reasonable potential to cause or contribute to a water quality violation, that BMPs must be modified or added to reduce the amount of pollutants. Ecology did add language that is much easier to apply. Additional or modified BMPs may be required where sampling results exceed benchmarks. Ecology also added language to clarify that selection of BMPs from the most recent Ecology stormwater management manual is applied to the area under development/redevelopment.

Ecology believes the confusion on submitting a copy of the SWPPP is a result of events that occurred prior to the release of this permit. Ecology has a SWPPP for most Permittees currently under permit coverage. This was a result of a request for this information during the appeal of the previous permit. Ecology will identify any facilities where the SWPPP is missing and request it. The permit only requires submission of the SWPPP during the application for coverage process because they are already available for existing facilities.

At this time Ecology will not require that all SWPPPs be submitted to Ecology in an electronic media form. While an across the board requirement is premature, there is nothing to prevent applicants from submitting a copy of their SWPPP in electronic media.

Issue: The updated Stormwater Management Manual for Western Washington currently represents AKART as will the eastern Washington version when it is completed. However, the permit does not require existing Permittees to implement BMPs according to the revised manual. The permit is legally bound to require AKART and must be revised accordingly. **(1, 8, 34, 39, 41)**

With the addition of sampling, the permit has changed from presumption based on required BMPs to an outcome based on sample results. This change should be incorporated into the BMP selection requirement and allow the Permittee to determine what BMPs they will apply and not the requirements of the Ecology manual. Permittees should only be held accountable based on outcome. Ecology's stormwater manual is only technical guidance and not a regulation. It is not appropriate for the permit to require use of a guidance document. **(20, 45)**

The permit requires the use of the most recent Ecology stormwater management manual available "during" final design of a project. What is meant by this and when does it apply? **(22)**

The permit needs to define what parts of the state must use the western Washington manual and what parts must use the eastern Washington manual. The permit is too lenient on what will be required of eastern Washington facilities before the eastern Washington manual becomes available. **(42)**

The permit should make no reference to the use of the western Washington manual by eastern Washington facilities. **(23)**

Response: Ecology does not agree that the permit fails to require AKART because it does not require all facilities to update existing BMPs to meet the revised stormwater management manual. This is because AKART does in fact include a demonstration of "reasonable". The economic test applied to BMPs included in the revised manual did not consider the incremental change from an existing BMP. The analysis was based on implementing BMPs for the first time (e.g. development and redevelopment sites). Absent the "reasonable" test for upgrading a BMP according to the revised manual, it would be inappropriate for the permit to require this. Ecology does appreciate the concern that this diminishes the value of revising the stormwater management manual. However, this concern should be tempered with the reality that there is no wholesale grandfathering clause in the permit. The permit only states that Permittees are not required to update BMPs that are already in place and consistent with the previous manual. Any requirement to add new BMPs must apply the most recent Ecology manual. The permit further qualifies this by requiring the new manual if additional or upgraded BMPs are necessary to comply with water quality standards. Ecology believes the permit properly implements AKART and provides a sensible approach for Permittees that have already implemented all the required BMPs under the previous manual.

Ecology does not agree that the addition of sampling changes the nature of the permit from the presumptive approach to performance based approach. Sampling was added as a test to help determine how well the presumptive approach is working. In any case, Permittees are required to implement all the best management practices (BMPs) appropriate for their industrial activity (AKART). This is a technology-based requirement. The law is clear. Technology-based requirements must be implemented without determining if they are required to preserve water quality in the receiving water. Technology-based requirements are based on an industry standard and must be implemented regardless of water quality-based performance.

Performance applies when considering whether additional BMPs are necessary to achieve compliance with water quality standards. The permit does presume that sites that achieve benchmark values are highly unlikely to be causing or contributing to a water quality violation and conversely, discharges that exceed benchmarks are more likely to cause a water quality violation. In that sense, the permit has added performance based component but it is tied to water quality-based considerations and is not tied to technology-based considerations. Permit language was added to specify that exceeding benchmark values could result in requiring new or upgraded BMPs.

Ecology does not agree that it is inappropriate for the permit to require compliance with the stormwater management manual (SWMM). While the SWMM is not regulation, the permit is a legal document for the authorization and regulation of discharge. The permit must provide sufficient controls on the discharge to protect the state's waters. The SWMM provides the set of standards necessary for stormwater management. The alternative to incorporating the SWMM by reference in the permit, is to take the SWMM content and add it to the permit. This would provide unreasonable bulk to the permit.

Ecology revised permit language to specify that the applicable SWMM is the one available when "beginning" final project design. Additional language was added to clarify what part of the state must use the western Washington manual and what part will use the eastern Washington manual when it becomes available. The permit requires facilities in eastern Washington to use the western Washington manual as applicable or other appropriate manual until the eastern Washington manual is available. Ecology believes this is reasonable language and provides sufficient flexibility for eastern Washington facilities until the eastern Washington manual is completed.

Issue: Permittees will need guidance and technical assistance if they are to develop a satisfactory monitoring plan. **(49)**

Response: Ecology agrees that technical assistance should be provided. A stormwater sampling guidance document will be prepared and workshops will be held to provide assistance on developing a monitoring plan, including procedures for taking a sample and arranging with a lab to process the sample.

Issue: The requirement to identify areas of existing and potential soil erosion is very broad. It seems this should be more tightly defined. **(29)**

A map that provides the details listed by the permit may provide information that should not be public given the potential for terrorism activities. The permit should address this. **(20)**

The permit should not require a map be drawn. The use of an aerial photo as the map should be acceptable. The permit should require the Permittee to add watershed information to the facility description. At a minimum it should include the Water Resource Inventory Area (WRIA), if the receiving water is impaired (303(d)), and if there are threatened or endangered species associated with the receiving water. The monitoring plan should include a photo of the point of discharge and also mark on the photo where stormwater sampling will occur. **(36)**

Response: Ecology agrees that an aggressive application of "potential soil erosion" could result in most of a site being listed. There has to be a reasonable application of what is meant by "potential". The permit was revised adding "in a significant amount" to suggest a reasonable approach.

Unless specific directives are received to the contrary, Ecology finds no legal basis to deny public access to information required by the permit. The information required for the site map is reasonable and applicable to the purposes of this permit and development of a SWPPP and will remain. The Permittee can request that certain information remain confidential or have access limited but Ecology will have to consider such requests on a case-by-case basis and within current public disclosure requirements.

Ecology believes that the word "drawn" is being applied too literally. There is no reason why a photograph would not be considered just another way of "drawing" a map. It simply has to include a scale of measurements so that size and distance can be determined. Ecology does not believe that the permit should require a photograph of the point of discharge although a Permittee may wish to do so.

The permit requires the Permittee to identify where they discharge to a receiving water. That location information is sufficient to identify WRIA and locate the discharge. Ecology will be developing an automated system to relate location of discharge to listed waters. This may also be tied to identification of threatened or endangered species.

Issue: The requirement to list materials makes no distinction or threshold on what should be listed. This seems to invite senseless listing of items with no reasonable potential to cause a problem. Providing a narrative on the potential to contaminate stormwater compounds the waste of time and is inappropriate for minor quantities of materials. There should also be a timeframe provided on the list of spills and leaks. Instead of complete inventories the list should provide general descriptions of types of materials and the range of quantities stored or processed. **(20, 29, 32)**

The permit language that requires the facility assessment to be "as complete as possible" and updated to "reflect changes" at the facility is too ambiguous. What is possible? What are changes? A literal interpretation would result in an assessment with endless details and constant updating. **(32)**

It is not obvious whether facility assessment would include incidental sources of contaminants such as tire wear, brake lining dust, hydraulic fluid, lubricating oil, etc. It also only requires listing of source control BMPs. What if there is no practical way to address the problem through source control? **(42)**

The list of areas associated with industrial activities that may be potential sources of pollutants should include copper and galvanized roofs. **(42)**

Response: Ecology agrees that listing of materials must apply a measure of reasonableness to what is listed. The intent was not to include every possible item. For example it is not intended to include a small bottle of rubber cement kept for incidental purposes but would include gallons of rubber cement kept on hand as part of the industrial activity. "Significant amount" was added to the permit language as an indication of the reasonableness test. Likewise, reasonableness is expected when applying "as complete as possible" and "reflect changes" in the facility assessment. The permit added "substantive" to changes to indicate reasonableness.

Ecology agrees that incidental sources such as those listed in the comment should be included in a facility assessment and the permit was revised to include an "incidental sources" example. The application of treatment BMPs may be necessary where incidental sources of contaminates can not be adequately controlled through source control. The SWPPP must include address this issue and indicate how these sources of pollutants will be managed.

Ecology agrees that copper and galvanized roofs should be added to the list of areas associated with industrial activities that may contribute significant levels of pollutants. It was added to the list.

Issue: It does not makes sense to estimate the volume of discharge as required by the monitoring plan. Volume is related to the storm and is not a set amount. **(27, 42)**

Response: Ecology agrees that draft permit "volume of discharge" estimate does not make sense as written. The intent is to provide information on volume as it relates to storm events and the permit was revised to require information from which a volume of discharge could be calculated.

Issue: The permit should specifically require the Permittee to follow the inspection and maintenance procedures recommended by the manufacturers or designers specifications. **(42)**

The phrase "below a significant amount" is qualitative and will not help the Permittee determine when treatment BMPs are required. The permit should provide a quantitative trigger. **(42)**

Response: The Permittee must properly maintain and operate all stormwater management facilities. Typically that will mean following the recommendations of the manufacturer or designer. However, Ecology believes the permit language sufficiently states the inspection, operation and maintenance requirements and does not require modification.

The permit definition section includes a definition for "significant amount". It provides sufficient direction to make a reasonable determination on when to apply treatment BMPs. It could be argued that it is a quantitative trigger in that it does reference an "amount" of pollutant. But whether considered qualitative or quantitative, Ecology believes the trigger is properly set.

Issue: Ecology should provide a model monitoring/sampling plan to assist Permittees and identify the components and requirements of a monitoring plan. **(36)**

Response: Ecology agrees and intends to develop a template that will be used at technical assistance workshops, helping Permittees develop a useful and complete monitoring plan.

Issue: The introduction in S9.B.3. should reference the stormwater management manual as the primary source of BMPs. **(36)**

Response: Ecology believes the intent of S9A.5. requires the application of the stormwater management manual at S9.B.3. but added language to make this clear.

Issue: The permit overstates the need to evaluate the risk of soil erosion at their site. It should be limited to soil erosion of a significant amount that may contaminate stormwater and discharge to surface water. **(29)**

Response: Ecology agrees with the commenter and added "of a significant amount".

Issue: The permit is overly prescriptive in requiring official BMPs and provides too little opportunity for the Permittee to apply other BMPs that are not listed in Ecology's stormwater manual. Permittees should be allowed to implement BMPs that are less effective as long as they perform well enough to comply with water quality standards/benchmarks. **(20)**

Response: There is no intent to prohibit the use of equivalent or superior BMPs. Ecology's stormwater management manual sets a commonly accepted standard and Permittees that apply the BMPs listed in that manual, as appropriate for their industrial activity, are presumed to be in compliance with AKART. Permittees that choose alternative BMPs have the burden to prove that they are in compliance with AKART. When a Permittee chooses alternative BMPs, the SWPPP must include a thorough discussion of equivalency and how the alternative BMP is an acceptable substitution. Permit condition S9.B.5, Other BMPs was revised to include language on substituting equivalent/superior BMPs.

Issue: The permit should not just require the Permittee to have a visual monitoring check list, it should identify what must be included on the visual monitoring check list. **(36, 41)**

The recordkeeping requirements for operational BMPs (S9.B.3.a.vi.)is unclear and incomplete. It should include the retention time and the requirement to certify that the facility is in compliance with the SWPPP. **(41)**

What happened to the requirement in the previous permit to investigate for the presence of non-stormwater discharges? References to Ecology's stormwater management manual should reference the 2001 western Washington manual. **(39)**

Response: Ecology does not agree that the permit must identify all that must be included for visual monitoring. Permit Special Condition S4 does outline some basic requirements. As a part of implementing the permit Ecology will provide a visual monitoring check list template.

Ecology agrees that the recordkeeping requirements listed at S9.B.3.a.vi. were incomplete and unclear. They have been revised to provide greater clarity and include certification of compliance.

Issue: It is unclear what regulatory authority Ecology relies on to direct that "peak flow" be regulated. What does regulating peak flow mean? **(45)**

Response: Water quality standards establish the protection of beneficial uses. Pollution as well as pollutants can limit beneficial uses. Peak flow that is greater and more compressed as a result of industrial stormwater discharges can limit beneficial uses by scouring the stream bed and by excessive bank erosion. These BMPs are applicable to new development and redevelopment.

Special Condition S10 – Solid and Liquid Waste Disposal

Ecology did not receive any comments for this permit provision.

Special Condition S11 – Notice of Termination

Issue: The permit is unreasonably restrictive in defining the basis for terminating coverage under the permit. **(51)**

Response: Ecology agrees that the draft permit was overly restrictive and it was revised to better define when terminating coverage is appropriate.

Special Condition S12 – Determination of Primary Activity

Ecology did not receive any comments for this permit provision.

General Conditions

Issue: In General Condition G2, the permit should more clearly define the phrase "properly operate and maintain". It should specifically reference operation according to the manufacturers or designers recommendations. **(42)**

General Condition G2 makes unreasonable demands for operation of stormwater facilities and should be revised to recognize emergency or reasonable repair and maintenance. **(32)**

Response: The general condition language is standard to NPDES permits issued by Ecology and requires proper operation and maintenance of pollution control facilities and practices. Typically that means following the manufacturers or designers recommendations. Adding the suggested language only begs the question of exceptions or alternatives. No change was made. .

Ecology does not agree that the language of G2 needs to provide exception to proper operation and maintenance at all times. Maintenance should be timed to avoid storm conditions when possible. Unavoidable situations fall under the bypass provision of Special Condition S8.

Issue: General Condition G3 implies that a facility would have to halt production as a means to control discharge of stormwater. This condition is related to process water and does not apply to stormwater. **(20, 45)**

Response: Ecology agrees and General Condition G3 was deleted.

Issue: General Condition G5(C) references reduction or elimination of discharge. This is a process water condition and not applicable to stormwater. Likewise (H) would revoke the permit coverage based on a qualifying local pretreatment program does not apply to stormwater. **(20)**

General Condition G5 should explicitly state that failure to complete and implement a SWPPP is grounds for revocation of permit coverage.

Response: Ecology agrees and (C) and (H) were removed.

Ecology agrees that developing and implementing a SWPPP is a critical requirement of the permit and failure to do so would be grounds for revocation of permit coverage. However, listing specific permit requirements under this general condition is not required and may imply that revocation would only apply to listed violations. The language will not be revised.

Issue: General Condition G17 does not include the legal citation for the listed penalties and does not appear consistent with state regulations for enforcement. **(29)**

Response: The general condition language is standard to NPDES permits issued by Ecology and reflects the laws of the state. Please reference RCW 90.48.140 and 144 and WAC 173-220-230.

Issue: General Condition G18 should be revised to reflect additional corporate authority options.

General Condition G18.C. defines requirements for changing authorization. Does this require reauthorization if the person originally signing the authorization changes?

Response: Signatory requirements of G18 are based on Washington state regulations, WAC 173-226-090 and as such will not be changed. The Permittee should inform Ecology of changes in personnel that directly affect permits requirements such as when there is a change in the person who has signatory responsibility for the permit (G18.A in the final draft permit, G17.A. in the final permit). However, Ecology sees no reason to resubmit authorization forms where there is no change in that person/position.

Permit Definitions

Issue: The definitions section should include a definition of AKART. **(36)**

Response: Ecology agrees and the definition was added.

Issue: Ecology should better define stormwater consistent with federal regulations so it is clearly distinguished from process water. **(46)**

Response: The definition of stormwater in the permit is reasonably the same as in the federal regulations but the permit did not include a definition for "stormwater discharge associated with industrial activities". That definition has been added to the definition section of the permit along with the reference to the federal regulations.

Issue: The definition of stormwater management manual should be revised to reflect the current edition. **(38)**

The definition of stormwater management manual is for the outdated Puget Sound Basin version. This needs to be changed and the definition should include information on how to obtain a copy of the current manual. **(42)**

Response: Ecology agrees and has updated the definition. However, adding information on obtaining a copy was not added. The problem with this sort of information is that it may quickly become obsolete. It is better to provide this information by a different means.

Issue: Ecology should define "design storm" as the 24-hour storm with a 6-month return frequency. **(45)**

Response: Ecology does not agree that "design storm" can be properly defined by the recommended storm event. Ecology spent considerable time defining and applying the concept of a design storm to best management practices in Ecology's stormwater management manual. The definition has been revised, providing the concept and purpose of the design storm but directs the reader to the stormwater management manual for specifics on how to apply it.

Issue: While "discharge target" is a useful concept it does not appear anywhere in the permit and serves no purpose here. **(20, 45)**

Response: Ecology agrees and has deleted the definition for discharge targe.

Issue: The definition of "treatment BMPs" should include "media filtration". **(42)**

Response: The list is not intended to be an all inclusive list but Ecology has no problem with adding "media filtration" to the list and the change was made.

Issue: The definition of "Equivalent BMP" should be changed to specifically say that the Permittee may substitute equivalent BMPs for those required by Ecology's stormwater management manual.

Response: Ecology sees no reason to change the definition but as noted above, did revise language in permit Special Condition S9 to clarify appropriate use of "equivalent BMPs".

Issue: The definition for "Existing Facility" is circular and should be revised. **(20)**

Response: Ecology agrees that the definition in the draft permit was not sufficient. It has been revised to more clearly reflect the use of "existing facility" within the permit.

Issue: The definition of "Illicit Discharges" should be changed to exclude those incidental discharges authorized by the EPA multi-sector general permit.

Response: Ecology does not agree that the referenced non-stormwater discharges should be authorized by this permit. Since the permit language was not changed, the definition will not be changed.

Fact Sheet

Issue: We find the fact sheet confusing because in one part, page 15, it says the permit does not require sampling and analysis and but later says all facilities must conduct stormwater sampling and analysis. **(40)**

Response: Ecology regrets the confusion but there is no inconsistency here. On page 15, the fact sheet is discussing the current status and compliance with the previous permit. In the current permit, there is no required sampling and analysis. Later in the fact sheet where it talks about what will be contained in the revised permit, it includes the new sampling and analysis requirement.

Issue: We are unclear why the fact sheet will not be revised based on comments. **(29)**

The discussion of "Critical Conditions" in the fact sheet should include a discussion of criteria as they apply to stormwater, including the lack of scientific foundation for applying the criteria to stormwater. **(29)**

The mixing zone discussion in the fact sheet says that there will be no mixing zone for pollutants of concern in discharges to waters listed according to section 303(d) of the Clean Water Act. What is the legal basis of this determination? **(29)**

The fact sheet states that failing to sample during a quarter where an appropriate rainfall event occurred will be a violation of the permit. Such events do not always result in a discharge. The permit does not seem to include the same language. What is meant here? **(29)**

The fact sheet states that suspension of monitoring for 303(d) listed parameters can only occur if there are eight consecutive samples of zero detect. This is not reasonable. **(29)**

We do not understand why Ecology used turbidity since there is no set correlation between it and total suspended solids. The application of turbidity is also incorrect because it does not consider background conditions in the receiving water. **(29)**

Response: The fact sheet is not typically revised as a result of public comment. The permit changes as a result of public comments and the response to comments become a part of the final fact sheet. As such, any corrections are included. Ecology agrees that this could be

confusing to readers of the fact sheet after the final permit is issued. However, unless there is very significant error, the fact sheet will not be changed. Ecology does not believe that the current fact sheet requires change beyond the inclusion of the response to comments.

Ecology does not agree that the water quality standards (criteria) are flawed in respect to stormwater. As the fact sheet points out there are challenges in determining compliance with standards as they apply to a stormwater discharge but this does not mean that standards should be considered guidance. There is no authority by which this general permit could in fact dismiss standards as guidance.

As discussed earlier, Ecology is charged with protecting the beneficial uses of the state's waters. Listings of impairment demonstrate that at least during some periods, the waters have exceeded standards for one or more pollutants. There is no dilution available for a pollutant if the receiving water exceeds standards for that pollutant. The permit correctly recognizes that dilution cannot be applied and hence the mixing zone is not applicable. This is consistent with Washington state regulations as well as federal regulations.

Ecology regrets the confusion on in the fact sheet language as it applies to sampling during a quarter where an appropriate rainfall event occurred. Appropriate rainfall event was supposed to include events that met sampling criteria. Sampling criteria includes the presence of a discharge during normal business hours. No sample is not a permit violation if there was no storm event during a quarter that could be sampled according to the criteria. The intent of this fact sheet discussion was to emphasize that the Permittee must plan ahead and be ready to sample when a qualifying even occurs. It would not be acceptable, for example, to take no sample because the Permittee decided to only sample on the third Tuesday of the second month of a quarter. There is some flexibility here but the Permittee must make a good faith effort to capture a sample according to criteria each quarter.

As stated previously, Ecology agrees that zero detect is a higher standard then may be necessary to determine no reasonable potential to cause or contribute to a water quality violation. Zero detect was an easier approach and the permit will retain it but language was added to allow for a statistical determination of "no reasonable potential".

Ecology has not tried to make a correlation between turbidity and total suspended solids (TSS) and is not sure why this is expected. TSS can be tied to turbidity based on site-specific consideration but the use of turbidity in the permit is tied to Ecology's historical use of that parameter as evidenced by its inclusion in water quality standards. Ecology believes the comment about lack of consideration of the standards (background condition in the receiving water) is in reference to the benchmark value used by the permit. The benchmark value is a best professional judgment determination of a value that is sufficiently protective that it is highly unlikely that any discharge at or below the benchmark will cause a water quality violation. The number was intended to be conservative and widely protective. Exceeding the benchmark does not mean that there is a water quality violation. The commenter is correct that a determination of a water quality violation requires the background turbidity of the receiving water.

Numbered Listing of Commenters

List of Organizations/Individuals

Public Testimony

	Testimony Provided By:	Representing
1.	Sean Callahan	self
2.	Sharon Churchhill	US Bureau of Reclamation
3.	Hal Covey	Covey's Auto Parts
4.	Brian Ferrill	Pull A Part
5.	Kate Floumer	self
6.	Mark Forcum	U-Pull-It Auto
7.	Kris Holm	Water Resource
8.	Sue Joerger	Puget Soundkeeper Alliance
9.	David Manelski	Puget Soundkeeper Alliance
10.	Pat Pearson	Puget Soundkeeper Alliance
11.	Tom Putnam	Puget Soundkeeper
12.	William Riley	City of Bellingham
13.	Judy Schramm	WaferTech
14.	Lynn Scott	Puget Soundkeeper Alliance
15.	Lindsey Unruh	TOYOCOM Devices of America
16.	Dan VanderKolk	self

Written Comments (Submitted by May 17, 2002)

	Organization	Submitted By
17.	Air Transport Association of America	Richard Davis
18.	Association of Washington Business	Grant Nelson
19.	Automotive Recyclers of Washington	Hal Covey
20.	Boeing	Mel Oleson
21.	Citizens for a Healthy Bay	Wendy Church
22.	City of Bellevue Utilities	Rick Watson
23.	City of Kennewick	Steve Plummer
24.	Del Monte Foods	Timothy Ruby
25.	Environmental Compliance Consultant	Robin Sandell
26.	Farallon Consulting	Peter Jewett

27. Kennedy Jenks	Nathan Graves
28. Kitsap County Public Works	Stan Olsen
29. Northwest Mining Association	Laura Skaer
30. Northwest Pulp and Paper Association	Llewellyn Matthews
Northwest Pulp and Paper Association Attachment	
31. Olmpian Precast Inc.	Judy Jewell
32. PACCAR	Vicki ZumBrunnen
33. Parametrix, Inc.	
34. People for Puget Sound	Bruce Wishart
35. Port of Seattle	Susan Ridgley
36. Public Employees for Environmental Responsibility	Lea Mitchell
37. Puget Creek Restoration Society	Scott Hansen
38. Puget Sound Water Quality Action Team	Scott Redman
39. Puget Soundkeeper Alliance	Sue Joerger
40. Resources for Sustainable Communities	Robyn du Pre'
41. Smith & Lowney	Richard Smith
42. Stormwater Management Inc.	Calvin Noling
43. WaferTech	Judy Schramm
44. WestFarm Foods	Joseph Muller
45. Weyerhaeuser	Ken Johnson
46. Self	S Armentrout
47. Self	Mark Kaufman
48. Self	Doug Lyons
49. Self	Marc Pacifico

Written Comments (Submitted after May 17, 2002)

	Organization	Submitted By
50.	Boise Cascade Corporation	Andrew Marshall
51.	Longview Fibre Company	
52.	Seattle Public Utilities	Sally Marquis
53.	Snohomish Co Surface Water Mgmt	Bill Leif

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Comments Submitted by

Air Transport Association of America

The Air Transport Association of America, Inc.[1] ("ATA") submits the following comments concerning the State of Washington Department of Ecology's proposal to reissue the State Waste Discharge General Permit for Stormwater Discharges Associated with Industrial Activities (the "General Permit"). As discussed by telephone on April 30, 2002, we are filing these comments by e-mail to the address specified (kjoh461@ecy.wa.gov), as well as by overnight delivery.

As tenants of the nation's airports, the member air carriers of ATA directly bear the burden of permit conditions affecting aircraft deicing practices and other operational matters affected by the permit. In addition, many of the infrastructure and other costs initially imposed on airports are transferred to ATA's member air carriers under the terms of lease agreements, through special fees, or otherwise. As a result, ATA and its members are directly affected by the proposed re-issuance of the General Permit as it applies to air transportation facilities. We appreciate the opportunity to provide these comments on the draft permit.

As permit holders at airports throughout the United States, ATA's member carriers have firsthand experience with each of the states' approaches to permitting stormwater discharges from airport facilities. The breadth of that experience results in an insight into the advantages and disadvantages of various regulatory approaches that is nearly unique among regulated industries. It is our hope through these comments to share the fruits of that experience with the Department on three specific points: (1) the importance of encouraging integrated Storm Water Pollution Prevention Plans developed jointly by an airport and its carrier tenants; (2) the benefits of a coordinated sampling plan, established jointly by the airport and the carriers, upon which all permittees can rely; and (3) the need to assess the reasonableness of potential Best Management Practices on a site-specific basis. ATA and its members have found these attributes to be indispensable to the effective control of stormwater discharges at airports.

Background

The application of a stormwater permit to airport operations presents a number of unique challenges. Unlike most of the industrial facilities to which such permits are applied, airport operations are characterized by the presence of a single owner/operator and a large number of independent tenants, including both ground-based businesses and air carriers. While this pattern of activity initially may suggest a similarity to the familiar industrial park setting, the situation at an airport is significantly more complex.

Air carriers, for example, often lease airport premises in common, meaning that at any given time the activity in a particular area may be controlled solely by the airport owner, by a single carrier, by multiple carriers, or by a ground-based tenant, with or with out involvement of a carrier or the airport owner. Added to that is the fact that airports and their tenant air carriers are parties to leases, airport-specific ground operations rules and other binding agreements that already establish many of their

[1] The Air Transport Association of America, Inc. serves as the principal trade and service organization of the major scheduled air carriers in the United States. ATA members include Airborne Express, Alaska airlines, Aloha Airlines, America West Airlines, American Airlines, America Trans Air, Atlas Air, Inc., Continental Airlines, Delta Air Lines, DHL Airways, Emery Worldwide, Evergreen International Airlines, Inc., FedEx Corp., Hawaiian Airlines, Midwest Express Airlines, Northwest Airlines, Polar Air Cargo, Southwest Airlines Co., United Airlines, United Parcel Service Airlines, and USAirways. Aero Mexico, Air Canada, KLM Royal Dutch Airlines, and Mexicana are associate members.

respective responsibilities with respect to management practices in the Aircraft Operations Area. Of course, safety is always the paramount concern in aircraft operations. As a result ground operations are carefully managed by the carriers and also are regulated directly by the Federal Aviation Administration.

In order to ensure effective control of stormwater-born pollutants in such a complex environment, ATA and its members have found that it is important to allow airports and air carriers the flexibility to closely coordinate their stormwater control activities. Specifically, we have found that the ability to prepare an integrated, airport-wide Stormwater Pollution Prevention Plan (SWPPP) and to allow all permittees to rely on a single airport-wide sampling program are key ingredients in the implementation of effective stormwater control in the air transport industry. Moreover, given the variations from airport to airport, we have found that site-specific review of Best Management Practices is vital.

The importance of maintaining a high degree of coordination between airports and air carriers whose operations are intimately intertwined is evident, and the proposed General Permit already provides significant flexibility in this regard. Similarly, the evaluation of potential Best Management Practices for reasonableness and efficacy individually at each airport is crucial, as no single practice or set of practices will be appropriate for every airport. The proposed General Permit also appears to acknowledge the importance and legal necessity of such site-specific evaluation. ATA provides the following specific comments to assist the Department in producing a final permit that clearly addresses these three concerns and allows airports and their air carrier tenants to reap the benefit of these three important enhancements.

- **Development of an Integrated, Airport-Wide SWPPP is Superior to Piecemeal Development of Separate Plans by Each Individual Permittee**

Stormwater permits are effective precisely to the extent that they result in SWPPPs that clearly identify the compliance obligations of the permittee. With this clarity comes certain knowledge of the applicable requirements and the capacity to objectively ascertain whether compliance has been achieved. And, of course, where obligations are clearly assigned, liability also can be clearly assigned.

In the absence of a clear allocation of responsibilities, however, individual permit holders may be uncertain about their responsibilities and regulatory authorities may be hamstrung in their enforcement efforts. The risk that obligations will not be clearly established is multiplied in the stormwater permitting program, where the bulk of a permittee's obligations are spelled out in a SWPPP of its own making. Further complications arise where multiple permittees with overlapping areas of operations are present within a single facility. The airport environment, in which both of these factors are present, is especially prone to permitting that lacks the necessary clarity.

At airports where multiple permittees develop separate SWPPPs for operations in the same area, the potential for confusion is great. The use of unclear or inconsistent terminology, unintended overlaps in areas of responsibility, the failure to establish consistent management practices for areas of common use, and differences in the level of detail in the competing plans – each of these is a source of confusion as to how obligations are shared among the permittees at the facility. Each lack of clarity in the allocation of responsibilities invites gaps in performance and increases the likelihood that an enforcement authority will be forced to take action against all permittees in order to remedy the failings of a single culpable entity.

A permit that required the development of separate SWPPPs by each permit holder at an airport would invite these kinds of difficulties. On the other hand, by authorizing multiple permittees at an airport to develop and participate in an integrated, airport-wide SWPPP, the Department will enable airports and their airline tenants to cooperate closely and to produce a document that clearly identifies the full range of compliance obligations and unambiguously allocates those obligations to the appropriate parties.

ATA asks the Department to make clear that, at air transport facilities, it is acceptable for separate holders of the new General Permit to jointly develop and submit an integrated, airport-wide SWPPP that explicitly defines the roles and responsibilities of each entity.

- **Reliance Upon a Coordinated Airport-Wide Sampling Plan Provides the Best Means of Monitoring the Performance of SWPPPs in an Airport Setting**

The second fundamental issue in tailoring a stormwater permit to the airport environment is the need for a single, coordinated sampling plan. The carefully coordinated operations and overlapping leaseholds at airports make it vital that the development of a sampling program be undertaken at the facility level. Coupled with the practical impossibility of plane-side sampling during active aircraft ground operations, these considerations argue powerfully for enabling multiple General Permit holders to rely on a single, facility-wide sampling plan.

From the regulatory perspective, use of a multi-permittee, facility-wide sampling program, should satisfactorily answer a number of questions:

Can it obtain the necessary representative data?
Is this the best alternative realistically available?
Is it consistent with the need to ensure the quality of the final discharge to waters of the state?
Is it consistent with practices employed by other states?

In our experience, and as described more fully below, facility-wide plans can satisfy each of these criteria.

— Monitoring Sites Can be Selected To Be Representative of Stormwater Associated with Air Carriers' and Other Tenants' Activities

A coordinated, airport-wide sampling plan can be developed to demonstrate the effectiveness of an integrated SWPPP covering both airport and tenant activities. By selecting proper drainage basins for sampling, the plan can determine the effect of Best Management Practices ("BMPs") for airline operations, for land-side road and parking operations, and for any other discrete activity subject to BMPs. Collected over time, data from each of the representative watersheds will show progress or point up the need for further enrichment of that sector's BMPs in just the manner that the permit anticipates.

— A Single, Coordinate Sampling Plan is the Best Means of Providing Analytical Data on the Effectiveness of BMPs

Selection of representative watersheds for sampling in a coordinated plan has several important benefits over other monitoring models. Of importance to the airlines and their passengers, it allows for characterization of the effectiveness of their jointly-adopted BMPs for ground operations without necessitating plane-side sampling during the most challenging weather and visibility conditions. Avoiding the safety and operational consequences of such activity is a matter of great importance. Moreover, execution of a single coordinated sampling plan eliminates the need for dozens or even hundreds of individual entities to collect essentially the same information. This avoids a confusing overload of information taken by different contractors from different storms using different (if conforming) sampling and analytical protocols. The adoption of a single coordinated plan eliminates these undesirable variables.

- Water Quality Is Best Protected by End-of-Pipe Sampling of Representative Watersheds

  Protection of the receiving State waters requires the collection of analytical data on the final discharges to those waters from the airport's separate storm water drainage system. A coordinated sampling plan can be developed that characterizes precisely these discharges. This is especially important where the final point of discharge is to Section 303(d)-listed waters or waters subject to a completed TMDL. Again, a single coordinated sampling plan relied upon by the airport and all of its permitted tenants will best satisfy this need.

- Reliance on Airport Sampling Plan is Consistent with Permitting at Other Major Airports

  Reliance on coordinated sampling plans at airports is the common means of streamlining sampling programs at other major airports within the U.S. Coordinated sampling of key locations by an airport accommodates the needs of airports, which often have dozens if not hundreds of tenants, while also providing the necessary information on discharge quality to regulatory authorities.

- **Site-Specific Evaluation of Potential Structural Best Management Practices is Both Necessary and Required by Law**

The proposed General Permit appears to require that structural source control BMPs be provided, including either BMPs from Volume IV of the SWMM or equivalent BMPs that result in an equal or better quality of stormwater discharge. This requirement would only partially fulfill the Washington statutory obligation to consider All Known, Available and Reasonable Methods of Prevention and Treatment Technologies ("AKART"). Specifically, while it would ensure that BMPs are "known," it would not necessarily establish that any particular BMP was "available" or "reasonable" at a specific airport facility.

Individual structural BMPs must be evaluated at each airport to determine whether they are reasonable, economic and effective; or if equivalent, non-structural BMPs may be more appropriate. Without such an evaluation, it is not possible to ensure that the AKART standard has been properly applied. Experience at airports nationwide has demonstrated that stormwater management solutions are airport-specific, and that what is reasonable at one airport may not be at another. ATA and its member carriers anticipate that the final General Permit will confirm the need to apply each of the elements of the AKART standard when determining which BMPs should be applied at a specific airport facility.

Conclusion

In closing, ATA and its member carriers appreciate the opportunity to provide the Department with these comments on the proposed re-issuance of the State's General Permit for Stormwater Discharges Associated with Industrial Activities. We stand ready to work with the Department to make this new permit effective and efficient in the unique environment posed by air transportation facilities, including airports. Please do not hesitate to call me at (202) 789-6025 or to contact me at this address should you have any questions about these comments or should you wish to discuss their content.

Association of Washington Business

Members of the Association of Washington Business (AWB) appreciate the opportunity to provide comments on the proposed NPDES Industrial Stormwater General Permit, dated March 29, 2002. AWB also appreciates the efforts by the Department in revising earlier drafts based on the comments and concerns expressed by AWB and member companies. Despite these efforts however, there are serious legal, technical and policy issues that need to be resolved prior to adoption of the final general permit.

General Comments

The following comments have been developed by a broad base of AWB members whose facilities must comply with the terms and conditions of the industrial stormwater general permit. A predominant concern expressed by many AWB members, are the costs that will be associated with implementing new sampling, monitoring, reporting and compliance requirements contained in the proposed permit. If adopted, the draft permit will also inevitably increase costs and workload to the department, as facilities choose to apply for coverage under an individual stormwater permit, instead of the industrial stormwater general permit.

A number of key components are missing from the draft permit and/or need to be expanded further. A common concern expressed by our members is the lack of flexibility provided to permittees in complying with various permit conditions. Some permittees have stated that they will find it impossible to comply with certain provisions of the draft permit. Stormwater by its very nature is intermittent and often unpredictable - both in its frequency and also in its content. Ecology should adhere to common sense policies that allow for the greatest degree of flexibility for permit holders attempting to comply with permit conditions. Flexible permitting strategies can provide a reasonable balance between protecting the environment and the costs necessary for that protection. Allowing an adequate dilution, or mixing zone is paramount and consistent with state and federal law. AWB members generally feel that setting specific effluent limits based on state water quality standards for discharges to 303(d) listed waterbodies is not appropriate, nor consistent with state and federal law. These issues and additional points are further explained in the comments contained herein.

Individual members of AWB such as Boeing, Weyerhaeuser, Northwest Pulp & Paper, Boise Cascade, Kennedy/Jenks Consultants, PACAAR, Parametrics Consulting and other member companies and associations will be submitting comments addressing specific concerns. AWB supports these comments and encourages the department to accept those suggestions in their entirety.

Industrial Stormwater General Permit Goals

Ecology should embrace a number of key goals in developing the industrial stormwater general permit. The general permit is intended to provide coverage for a large number of industrial facilities as a cost-effective alternative for both Ecology and the permittee to applying for and issuing an individual stormwater permit. As compliance with the general permit becomes more costly, complex and confusing, businesses will choose to apply for coverage under an individual permit, adding more overhead costs to the department. The permit should be written so that it accomplishes the following goals:

- **The Permit Should Be Consistent With State And Federal Laws And Regulations.** The draft permit falls short of this goal in a number of key areas.

There are no state or federal laws requiring compliance with water quality standards at the point of discharge for stormwater. However, sections S3.D.1 and 2 set a new precedent by going above and beyond current state and federal laws and erroneously trump the TMDL process and future effluent limits not yet defined by a TMDL. AWB recommends Ecology re-write this section and instead rely on an expanded benchmark system (consistent with EPA's MSGP and further explained in comments below) and the state TMDL program which takes into consideration the nature of stormwater and allows for both point and non-point source control.

Ecology is creating new regulations regarding mixing zones inconsistent with state law, and circumventing the rule making process. S3.E describes the applicability and size of mixing zones and what requirements are necessary for a permittee to be granted a mixing zone. This section of the draft permit is particularly troubling for AWB members. State and federal law clearly authorizes the availability of mixing zones and these laws have consistently been upheld in various judicial decisions.

EPA has also maintained that mixing zones are necessary in managing the peculiar and difficult nature of stormwater. It is confusing as to why the state is suggesting differently. Ecology should instead, adhere to current state and federal law. WAC 173-201A-100 specifically spells out the state policy regarding mixing zones which should be followed. Guidance documents, such as Ecology's Permit Writers Manual, are not equivalent to state laws and regulations and permittees should not be forced to abide by policies based on Ecology staff interpretations of guidance documents. Unless and until state law is amended, or Ecology feels compelled to promulgate rules on this subject, the industrial stormwater general permit should be consistent with state law addressing mixing zones.

- **The Permit Should Provide Ample Flexibility To Facilities In Determining How To Best Manage Stormwater Discharges.** Stormwater is an unpredictable, inconsistent and an intermittent event, influenced by many factors, including those beyond the control of a permitted facility. The following suggestions should be incorporated into the draft permit to help accomplish the above stated goal.

  - Demanding compliance with state water quality standards intended for point sources or 'direct discharges' is not appropriate. State water quality standards as applied in the draft permit should not be used to determine the impact of stormwater on the receiving water, nor should they be used to conclusively decide whether a permittee must install additional control technologies to improve the quality of effluent. AWB concurs with comments submitted by member companies suggesting that provisions in the draft permit inconsistent with the nature of stormwater discharge, be modified or eliminated.

  - Ecology should follow the lead and example of EPA's Multi Sector General Permit (MSGP), which recognizes the problems associated with using water quality standards to determine stormwater effluent limits. This understanding has led EPA to conclude that 'benchmarks' allow facilities greater flexibility in managing stormwater and to allow the states in delegated programs to decide how to demonstrate compliance with applicable standards.

  - The compliance schedule for existing facilities (S3.D.2) with effluent limits based on discharging to a 303(d) listed waterbody should provide a means for a facility to disengage if sampling data indicates that additional BMPs, including source controls or treatment option, are not necessary. Take for example the following scenario: Under the proposed compliance schedule, if a facility discharging to a listed waterbody, samples its discharge in the first quarter of 2003 and finds that the effluent limit based on a parameter defined in a TMDL is exceeded, the multi-year compliance schedule becomes effective. Under the compliance schedule defined in the proposed permit, the facility would then be required to identify the source of the pollutant and treatment options within one year of the exceedance. Within two years of the exceedance, the facility would be required to implement nonstructural source controls and within year three, structural source controls would be required. Additional actions must be taken in years four and five. What happens if during the first year, subsequent testing reveals that the one sample taken in the first quarter was not representative of the discharge and subsequent testing and data reveals that for the next 'x' number of quarters, the effluent is within the defined limits? Under this scenario, facilities would seemingly be required to install expensive and unwarranted source control technology. Additionally BMPs and other steps taken to address compliance with the effluent limit in any of the following years might have addressed the cause the exceedance and no further control actions would be needed. AWB members assume that this is an oversight on the part of the agency and recommends that the draft permit be re-written to allow an appropriate

compliance schedule disengagement mechanism. This example further illustrates why requiring strict compliance with state water quality standards for stormwater discharges is not appropriate and why additional flexibility is needed in the draft permit in order to effectively and fairly manage stormwater.

- The compliance schedule should allow additional time to implement BMPs under the compliance schedule. Although the compliance schedule is appreciated, the twelve month intervals between required implementation of BMPs is too short. Facilities need additional time to monitor, measure the effectiveness of BMPs and demonstrate compliance with permit conditions. Since eight consecutive quarterly samples must show compliance before monitoring can be suspended, two years should be allowed between each interim compliance date. The Fact sheet should acknowledge that the TMDL will be and should be the primary vehicle for setting effluent limits for all sources including stormwater. Ecology should not make the TMDL irrelevant by imposing limits on stormwater ahead of other contributing sources.

- The permit should acknowledge that effluent limits for TMDL listed pollutants cannot be established for many chemistries found in the water column. Alternative testing methods such as whole effluent toxicity should be allowed to demonstrate they do not present a reasonable potential to pollute or violate the intent of the Water quality standards. The permit should clearly state that if an effluent limit cannot be set, the permittee will not be considered to be out of compliance with the permit since it would be impossible to demonstrate compliance.

- Monitoring and sampling requirements as defined in S4 are overly restrictive and necessitate additional flexibility. Ecology's not requiring sampling outside of 'normal business hours' is appreciated, however some businesses operate '24/7'and normal business hours may literally be around-the-clock. Ecology should limit sampling requirements to 'normal daylight hours.' Additional safety considerations such lighting, other adverse weather conditions and potentially hazardous weather event conditions should exempt a facility from having to perform a sampling that storm event, even if it is the only qualifying event of the quarter. Requiring grab-sample to be taken within the first hour of a storm event does not necessarily identify the periods of highest pollutant discharge concentrations. Collection of a sample should be allowed up to 3 hour after a storm event qualifies and sampling frequency should be in years two and four. Additional monitoring and other compliance requirements should not be based on any small subset of these sampling values.

- **The Permit Should Provide Reasonable Protection To The Environment While Minimizing Costs.** As described above, the draft permit imposes many new requirements for businesses covered under the industrial stormwater general permit. Additional monitoring, sampling, reporting and compliance requirements should be examined in order to assess their financial impacts to business and environmental gain. The fundamental concept of 'cost/benefit' should be applied throughout the industrial stormwater general permit.

Thank you for the opportunity to provide these comments and for taking them into consideration in further revising the draft industrial stormwater general permit.

Automotive Recyclers of Washington

On behalf of the members of the Auto Recyclers of Washington (AROW), the vehicle dismantling industry wishes to make the following comments on the proposed re-write of the Washington State General Industrial Stormwater Permit. The vehicle dismantling industry is one of the industries required to have a stormwater permit if they have a stormwater discharge from their facilities. Many licensed firms in our industry are covered by the current General Industrial Stormwater Permit.

The legally licensed vehicle wrecking industry is one of the most environmentally beneficial industries in the entire State of Washington for the following reasons. This industry:

- Reclaims discarded products and converts them to re-use, the highest priority of dealing with a discarded product.
- Collects millions of pounds of used fluids; batteries and other waste items and disposes of them in the most environmentally protective way.
- Captures thousands of pounds of ozone depleting gas from salvage vehicles.
- Recycles hundreds of thousands of tons of metals after reusing as much of the salvage vehicle as possible, reducing the need to mine additional resources to produce new metals.
- Provides critical access to affordable vehicle repair to lower income individuals and families who purchase used parts to keep their vehicles operational.
- Provides nearly 2,000 family wage jobs for workers across the state.
- Reduces the risk of vehicle theft by protecting against the trafficking of stolen vehicle parts.
- Is the oldest continuously-operating reuse and recovering industry in Washington State.

Before making specific comments on the draft permit, AROW wants to clearly inform the Department of Ecology, state officials-at-large and interested parties that licensed vehicle wreckers are only acquiring between thirty-percent to forty-percent of the "totaled" vehicles. Sixty to seventy percent of the totaled vehicles are being sold to non-licensed citizens, most of whom have no business license, no legal place of business, and do not comply with any environmental protection regulations including protecting stormwater water quality. If the Department of Ecology and the State of Washington are truly interested in protecting the water quality of stormwater from potential sources of contamination, the Department must engage in an aggressive effort to identify these illegally operating individuals and ensure their compliance with the provisions of this Permit. Otherwise, more than 60% of the fluids that may be released from wrecked vehicles (approximately 120,000+ of the 200,000+ vehicles "totaled" in Washington State each year) will NOT be controlled or regulated in any way by this permit. Non-licensed vehicle wreckers are rebuilding and putting back on the road over 25,000 vehicles every year in Washington State - without having to meet any environmental regulations at all.

The Auto Recyclers of Washington offer the following specific comments:

- Non-compliance by non-licensed vehicle dismantlers with the requirements of the existing general industrial stormwater permit and the proposed new general industrial stormwater permit is extremely widespread.
  - The non-licensed vehicle wreckers dismantle a greater volume of wrecked vehicles than do licensed vehicle wreckers in Washington State. The potential risk from the contamination of surface and groundwater from these non-licensed, illegal operations is HUGE - over 1.9 million pounds (240,000 gallons) of used petroleum alone per year, an additional potential 1.9 million pounds (240,000 gallons) of used anti-freeze, improper disposal of up to 120,000 lead-acid

batteries (6+ million pounds of highly toxic waste). All of these wastes are currently uncontrolled due to a lack of any enforcement with respect to these operations. Each of these wastes poses a HUGE risk to the state's water quality, both surface and groundwater.

- Failure by the Department of Ecology and the State of Washington to effectively enforce compliance by non-licensed vehicle wreckers with the requirements of this Permit will result in a violation of both the Washington State Water Pollution Control Act and the Federal Clean Water Act.
- It will also result in huge competitive advantages for non-licensed vehicle wrecking operations, and seriously threaten the continued existence of licensed vehicle wrecking operations all across Washington State. How will the State of Washington dispose of over 200,000 vehicles a year if this and other state regulations destroy licensed vehicle-wrecking operations?

The proposed new Permit must include provisions to ensure effective enforcement against illegal vehicle wrecking operations.

- The proposed new General Industrial Stormwater Permit puts honest, licensed vehicle wrecking operations at a severe competitive disadvantage when they try to compete in the marketplace with illegal non-licensed wrecking operations. The projected annual cost of complying with the proposed new Permit will be in excess of $2,000 in direct costs per year for a licensed wrecking operation (not including the cost to implement source controls or treatment actions). It will require increasing sales by over $40,000 per year to pay these additional costs out of profits. Please allow us to repeat that - an honest licensed vehicle wrecker will have to increase their sales by over $40,000 a year to generate the additional $2,000 in profits to pay the costs to comply with the new requirements in this new Permit. Yet, their illegal, non-licensed competitors will bear none of these costs and will provide none of the environmental protections unless dramatic changes are made in enforcement of the Permit's requirements on their operations. Unless this new Permit contains strong and effective enforcement against illegal wrecking operations, it will push some legally licensed wrecking operations to cease operation.
- The requirement in the proposed new Permit for the firm to identify their "receiving water" is an extremely big challenge for many legally licensed vehicle-wrecking operations. In many cases, the stormwater drains into a ditch that runs along the road in front of the facility or a ditch that runs along the side or back of the operation. How is the operator of a wrecking operation to know what the name of the receiving body is for that runoff?

  This requirement of the proposed new Permit necessitates that the Department of Ecology provide assistance to operators of wrecking facilities to properly identify the "receiving body." Without such assistance, it could cost the operator of a wrecking facility $ 100's to comply with this requirement. The operator of a wrecking operation must increase sales by $2,000 for every $100 in increased costs to pay for the increased costs.

  The Department of Ecology has an obligation to assist this industry in complying with this requirement.
- The new sampling requirement of this proposed new Permit is very troublesome for lawfully operating vehicle-wrecking operations. It requires a sample be taken within the first hour of a qualified storm event. This is a tremendous new additional burden being imposed on these lawful operations that their illegal competitors have no cost or concern with. Here are the very real impacts of this requirement:
  - Now, legal vehicle wreckers will, in addition to all of their other demands, have to keep very close track of the weather to be able to identify a "qualified storm event" when they can take the required stormwater samples. This is on top of the thousands of other regulations they are

required to comply with as well as all of the demands of running a business. Was it 24 hours since the last storm? Will this storm produce at least one-tenth of an inch of rain? Answering these questions on a daily basis is a HUGE, new demand on legally licensed vehicle wrecking operators.

- Vehicle wrecking operations, both legal and illegal, acquire most of their inventory (wrecked vehicles) from vehicle salvage auctions. A vehicle salvage auction is where insurance companies that have "totaled" or wrecked vehicle sell the remaining salvage to the highest bidder. There are three or four such salvage auctions per week, and each auction lasts several hours and requires additional time before the auction to preview the salvage to determine its value. Because the purchase of salvage is such a key element in the success or failure of a vehicle wrecking operation, in almost all cases, the owner of the wrecking operation personally attends the salvage auction. Also, because a poor stormwater sample can potentially cost a legal wrecking operator thousands of dollars to install source controls and treatment controls, the owner will almost always take the stormwater sample himself. This new sampling requirement will result in the following very common scenario for lawful vehicle wrecking owners:

  The owner of a lawfully licensed vehicle wrecking operation travels to the salvage auction and spends several hours viewing the salvage vehicles that are about to be auctioned (there are usually hundreds of salvaged vehicles that will be sold at each auction). The auction begins. Just thirty-minutes into the auction, it begins to rain. The owner knows he has to take a stormwater sample, and it is nearing the end of a calendar quarter. So the owner leaves the salvage auction to travel back to his facility to take the stormwater sample within the first hour as required by the new proposed Permit. Depending on the location of his facility relative to the salvage auction, he is gone at least one hour and he may miss the entire auction. While he is gone taking his required stormwater sample, his illegal competitors are buying the cars he wanted to buy and needs to dismantle for future sales for his company.

  This new sampling requirement will have a huge negative impact on many legally licensed auto wrecking operators as they can lose most or all of a day because of not being able to bid on and purchase salvage they need to run their businesses. This will cost many legally licensed vehicle- wrecking operations thousands more per year in lost time and lost opportunities to purchase the vehicle salvage they need. Yet, their illegal competitors BENEFIT from this new proposed Permit because it will reduce the number of bidders bidding for salvage at the auction (usually results in a lower winning bid) because the legal wrecking operators must leave the auction to take their stormwater samples.

  The requirement to sample stormwater runoff within one hour of the beginning of the runoff of a qualified storm event is extremely onerous to legally licensed vehicle wreckers. The one-hour requirement must be extended so as not to put legal wrecking operations at a far worse competitive disadvantage with the large number of illegal vehicle wrecking operations they now compete with. To make matters worse, this same scenario could occur multiple times in a calendar quarter because the rain event the operator thought would be a 'qualified event" failed to produce the one- tenth of an inch of rain required to make it a qualified event. The legal wrecking operator must leave another auction in the future in an attempt to comply with this new sampling requirement. By the way, how will the legally licensed wrecking operation know if a storm event qualifies?

Clearly this proposed new General Industrial Stormwater Permit imposes huge new costs on lawfully licensed vehicles wreckers, imposes huge new burdens on lawfully licensed vehicle wreckers, and puts lawfully licensed vehicle wreckers at a huge competitive disadvantage as they try to compete with the extremely large number of illegal non-licensed wrecking operations now operating in Washington State. This proposed new Permit proposes NOTHING to address these costly and extremely harmful impacts on the lawfully licensed vehicle wrecking firms. This proposed new Permit attempts to protect stormwater contamination from vehicle recycling operations but FAILS to apply these requirements to over 60 percent of the vehicles that are and will be dismantled. **At a minimum**, the following revisions must be made to this permit:

- Add effective enforcement provisions to assure that those who comply with the requirements of this permit are not put in a competitive disadvantage by having to compete with others who escape having to comply with these new requirements.
- Provide extensive technical assistance to small business owners who must comply with the requirement to identify their "receiving water", to help them comply with this requirement in the least amount of time and with the least amount of difficulty possible.
- Extend from one hour to "as soon as reasonably possible" the requirement to take a sample of stormwater runoff from a facility. The one-hour requirement is draconian and seriously harms the legally licensed vehicle wrecking operations.

Thank you for your careful consideration of our comments. We will be pleased to assist the Department in making the revisions proposed.

Boeing Company

The Boeing Company is pleased to submit comments to the Washington Department of Ecology on the proposed A NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM AND STATE WASTE DISCHARGE GENERAL PERMIT FOR STORMWATER DISCHARGES ASSOCIATED WITH INDUSTRIAL ACTIVITIES for issuance on June 5th, 2002. The Boeing Company has nine sites potentially affected by this permit. These facilities employ approximately 66,900 people in a range of manufacturing, engineering and facilities activities. This permit is seen as one element in the Department's activities that are vitally important to the long-term environmental and economic health of Washington State and its citizens. This permit's importance has been reflected in the extensive cooperation of WDOE personnel with Boeing and industry representatives in its development.

The attached comments will address:

- Policy issues that address the broader issues affecting the management of industrial storm water.
- Technical issues and clarification that examine the specific provisions of the proposed General Storm Water permit.

Where appropriate, recommendations or interpretations of the permit language are included for Department consideration. These comments are not intended to be all-inclusive on each point. Rather, we ask the Department to consider opening discussions with appropriate technical and policy personnel, including those at Boeing, to develop workable responses that advance the state of the art of managing storm water.

Attachment 1
Washington State Storm Water General Permit
Associated with Policy Considerations

Issue: Recognition of the Uniqueness of Stormwater Discharges (in contrast to Process Waster Discharges) is Critical to the Development and Implementation of an NPDES permit for regulating storm water discharges associated with industry.

Comment: Stormwater discharges are inherently different from process water discharges. Consequently, flexibility is necessary to adapt the National Pollution Discharge Elimination System permit (NPDES) to stormwater discharges.

Examples in the proposed stormwater permit requirements that are inapplicable to stormwater discharges can be easily found and include the following:

- In section G3 the permit addresses the halting of production as a means to control discharge of storm water. Since storm water, by definition, is not the result of -- and cannot include discharges from -- a production activity (illicit discharge) then the halting of that activity should in no way affect the quality of the storm water.
- In section G5 (C) (Permit Coverage Revoked), the stormwater permit can be revoked because of changed conditions that require the discharge be "reduced or eliminated." However, the discharger has no control over the rain and cannot stop it at will.
- In part G5 (H) (Permit Coverage Revoked) the permit can be revoked by incorporation into a pretreatment facility – an activity associated with process wastewater treatment, not stormwater

These examples illustrate some of the difficulties of using a process water permit to control what is essentially a non-point source problem that happens to eventually end up in a discrete conveyance, – which results in the storm water being regulated by a permit designed for process /POTW discharges. Consequently, we recommend that any provision in the stormwater permit, including the ones above, which is inconsistent with the inherent nature of a stormwater discharge be modified or eliminated.

The EPA has recognized the unique issues associated with stormwater discharges in its promulgation of the Multi Sector General Permit. Indeed, the preamble to the MSGP identifies a number of inconsistencies in how the permit is applied to storm water discharges when compared to process water discharges. The "Benchmark" concept is a good example of how the EPA recognized that use of effluent standards or water quality standards as a direct indicator of storm water discharge quality is not appropriate. It is similarly inappropriate for the State to strictly adhere to NPDES permitting approaches for process water in its permit regulation of stormwater.

We ask that the State utilize the flexibility inherent in its authorization of the Federal NPDES program to implement policy, practices and a permit that recognizes storm water as a unique water management issue. In so recognizing, the State should re-evaluate the draft permit to ensure that logical constructs for a non-point source control program are the model used, not traditional process water point source approaches.

Issue: Recognition must be given of the compliance problems caused by the off-site multi-source nature of many stormwater discharges

Comment: One significant difference between NPDES industrial process water and storm water discharges is the storm water permittee's ability to control the source and quality of the discharge. Significantly, contaminants can enter stormwater from off-site sources outside the permitee's control. This most commonly occurs when multiple dischargers share a common stormwater drainage system leading to a common discharge point. For example, the run-off from I-5 discharges into community

drainage collection systems that ultimately discharges to surface water via a permittee's discharge pipe. While this makes sense for the community's management of a common stormwater discharge problem; it can also results in the potential imposition of an significant liability for the downstream permittee. In such circumstances, the permittee's sampling results may show exceedance of benchmarks or water quality standards that are not caused by the permittee, yet under the stormwater permit, the permittee may be the target for non-compliance actions.

Unfortunately, the draft permit is silent on this subject and the actions that a permittee may take to protect itself. The range of possible actions is highly complicated by the permitting environment for storm water. While there are municipal permits for some large jurisdictions, they may be riddled with smaller jurisdictions not covered under Phase I. Up pipe dischargers may not have the appropriate SIC code to be issued an industrial storm water permit. Residential areas, streets, parks and a host of other sources are simply not covered now, or intended to be covered in the future.

The permittee needs an effective way to deal with these situations. Reliance on common law theories of nuisance and trespass is inadequate protection for the down stream permittee. Even when the permittee is willing to bear this cost the legal issues of access may preclude the ability to collect needed data. Smaller businesses may not be able to afford the costs of litigation to bring others into line. Larger businesses may not be willing to offend municipalities or others who have a strong bearing on the company's ability to do business in a particular location.

Rather, it is a mechanism for programmatic relief that the Department is requested to develop here. This relief needs to apply In the event that a stormwater discharge fails to meet water quality standards because of contaminants present in the discharge from upstream, offsite sources. The Department must provide the permittee the opportunity to notify Ecology of the true source of the problem receive an effective permit shield from enforcement and liability.

One approach would be to impose a burden on the permittee to undertake the investigation necessary to demonstrate (i) that the permittee is not responsible for the noncompliance and (ii) that offending off-site permitted and un-permitted sources are the concern. The permittee would be required to provide the Department with notice of the off-site causation of the noncompliant discharge as part of the permitee's quarterly discharge monitoring report. The permittee also would have the burden to substantiate its position by completing a full evaluation of the potential to pollute at its facility and finding that it had implemented/installed all reasonable BMPs. Further, the permittee would have to identify that potential off-site contributions to the storm water discharge exist and that they may have a potential to cause the pollution in question. Then the permittee must provide this information to the Department. The Department then could conduct a verification inspection to determine the facts. The Department also could take any necessary permitting/compliance action necessary to address the upstream violators. Finally, the Department should issue the permittee a notice that its discharges is not causing or contributing to a violation of water quality standards and that no further BMPs are required.

Another approach to this problem would be for the Department to create a "drainage" specific general permit that would in effect bring everyone on the discharge to the same level of responsibility for the discharge. WAC 173-226 provides the Department with the ability to issue general permits based on a range of parameters, including geographical or watershed boundaries. The Department could then issue permits to all dischargers, of any type, to the drainage as "potential significant sources of pollution." This would be analogous to establishing a watershed TMDL to address multiple sources in a limited discharge area. The application of these permits would quickly identify actual sources of pollutants and allow corrective actions to be taken. It might be then possible to revoke the permit and bring the specific pollutants sources under either the existing general permit or issue an individual permit.

These are just two ideas. Other alternative approaches may exist to resolving this challenge. We request that Ecology actively consider and address the issues associated with off-site multi-source discharges of stormwater.

Issue: Provide the industrial stormwater discharger with the ability to include coverage for 1-5 acres onsite construction activities within the industrial stormwater permit.

Reference: S1C5. Construction activities as identified by 40 CFR Subpart 122.26(b)(14)(x) and Subpart 122.26(b)(15).

Comment: When EPA originally promulgated the stormwater permit for construction activities, it excluded construction sites of less than 5 acres from the permit requirement. The new Phase II rules will incorporate a second tier of permitted construction between one and five acres. Since an industrial activity already has an extensive SWPPP in place to manage storm water, it would seem a logical extension to incorporate the smaller construction activities (less than 5 acres) into the industrial permit and not require a separate permit. A combined approach would provide administrative and cost benefits to both the Department and permittee through reduction in paper work to process each new construction permit. The merger of the permits would also benefit permittee small on-site construction planning and handling of unexpected construction events (i.e.: burst pipes). We recommend that the Department include language in the permit that will allow incorporation of this concept when the new construction storm water permit is developed and implemented in phase II storm water program.

Permit integrity could be maintained by requiring the industrial permittee to:

- Include all relevant construction permit related considerations into their SWPPP,
- Follow the public notice and SEPA requirements at the renewal of the General Permit. Subsequent construction between one and five acres would then be conducted under this "unified" permit.
- The permittee would provide WDOE with written notice of the start, scope and schedule for the construction activity.
- Sampling and visual monitoring requirements could be incorporated by reference from the upcoming storm water construction permit for Washington State.
- Reporting on Construction activities would be required in the Quarterly Discharge Monitoring Reports.

Issue: Water Quality attainment must be adaptable to account for the inherent unique characteristics of storm water discharges

Reference: S3D 2. Existing Facilities: Existing facilities that discharge to waters listed as impaired by the State under Section 303(d) of the Clean Water Act must comply with the State's water quality standards for the named pollutant(s) at the point of discharge. Existing facilities subject to a TMDL determination must be in compliance with the conditions of the TMDL determination and detailed implementation plan.

Comment: Stormwater discharges by their very nature are erratic in volume and contaminant loading. In contrast, Water Quality standards were designed to reflect the impact of pollutants from POTWs and from industrial process water discharges, which are by their nature more constant and more consistent discharges... Consequently, Water Quality standards assume that a few in-stream samples over the year would adequately reflect the conditions to be found at any time.

The Water Quality Standards further assumed that they would be attained even during a worst-case 7Q10 flow event – which would be the lowest flow event. Stormwater discharges are the antithesis of such an event. Under the Water Quality Standards, the impacts to Water Quality are divided into two types: acute conditions and chronic conditions. An acute condition is a 3-hour lethality standard while a chronic standard is a 72 hour standard for non-lethal impacts. Neither condition is a reasonable measure of Water Quality during a storm water event. A storm event may have some heavy loading in the early part, which will then be rapidly attenuated by additional high quality flows, which makes the average 3-hour characterization meaningless. The increased flow from stormwater also provides

additional attenuation flow to reduce any chronic levels noted in the steady state condition. Storm flow impacts on water quality are thus very hard to evaluate in all but egregious situations.

Nonetheless, the proposed permit inserts storm water discharges into a water quality TMDL / 303d program as if it had the same characteristics as a process water discharge. The requirement that a discharge of storm water meet water quality standards at point of discharge using a one-hour grab presumes a constant contaminant load for the following two hours- an assumption not based on any data set currently available.

The EPA in its policy letter (Robert Perciasepe Assistant Administrator) on storm water acknowledges the problem of associating storm water discharges to water quality standards.

"In response to recent questions regarding the type of water quality-based effluent limitations that are most appropriate for National Pollutant Discharge Elimination System (NPDES) storm water permits, the Environmental Protection Agency (EPA) is adopting an interim permitting approach for regulating wet weather storm water discharges. Due to the nature of storm water discharges, and the typical lack of Information on which to base numeric water quality-based effluent limitations (expressed as concentration and mass), EPA will use an interim permitting approach for NPDES storm water permits.

The interim permitting approach uses best management practices (BMPs) in first-round storm water permits, and expanded or better-tailored BMPs in subsequent permits, where necessary, to provide for the attainment of water quality standards."

We encourage the Department to follow the same approach as EPA.

The Department has been delegated the authority to make these judgments, and in light of this EPA guidance, the rationale to do so. The benchmark parameters are designed to demonstrate a "reasonable potential to pollute," for an intermittent discharge. The "reasonable potential (not) to pollute" is a combination of factors such as seasonality, frequency of storm events, water levels from other uses, effectiveness of non-point control activities, and background receiving water levels. Such an approach makes more sense than applying an absolute requirement to meet a numerical standard.

The Department is encouraged to scrap the requirement for compliance with Water Quality Standards at the point of discharge for 303(d) listed waterbodies and replace it with an expanded benchmark parameter system to cover listed pollutants. The Department goes on at length in the fact sheet as to why it does not want to use Whole Effluent Toxicity testing in the storm water program. Indeed, many of the Department's arguments as stated in the Fact Sheet on the variability of impacts and unpredictable results bolster the argument for not using water quality numeric standards. If the results for a controlled test cannot be predicted for storm water then how can the results of meeting Water Quality Standards at Point Of Discharge be adjudged to be an effective reduction in pollutant? The Department is encouraged to reconsider its position on compliance with Water Quality Standards at point of discharge. Further, the Department should reconsider allowing voluntary WET testing as a means to demonstrate that a discharger is in compliance with water quality standards, an approach recommended by the EPA interim storm water guidance.

The Department's position that no mixing zones will be allowed on 303d listed streams fails to recognize the seasonality and flow issues linked to storm water discharges. The Water Quality Standard assumes the 7Q10 flow and uses a highly protective limit derived from laboratory testing. When it rains, it is rarely a 7Q10 event for long and the additional flow creates additional assimilative capacity. Storm water should be treated not as a constant source of pollutants, but rather as an influx of fresh assimilative capacity that may improve the quality of the aquatic environment. When flows increase those discharging to 303d listed waterbodies should be allowed a corresponding increase in their allowable discharges, in effect a flow weighted mixing zone. Rather, than attempt to implement such a

complicated strategy, it is again suggested that the Department adopt benchmark discharge values for those pollutants of concern in the waterbody, which acknowledges the value of increased flow in reducing the potential to pollute.

In summary, the application of process based water quality standards utilizing an assumption of steady state discharge is an invalid approach to discharges to 303(d) listed streams. An alternative set of benchmark values recognizing the variability of storm water impact should be used. Failure to meet these alternative benchmarks would trigger increased BMP management per the proposed scheme for non-303d listed waterbodies. The Department is further encouraged to complete TMDL studies to identify key significant pollutant contributors. Those dischargers not found to be significant contributors should be instructed to follow non-303d provisions.

Attachment 2
Technical Issues and clarifications to the General Permit for Stormwater Discharges Associated with Industrial Activities

Section S1 - Permit Coverage

REFERENCE: S1D1 (Modification of Permit Coverage). A significant process change is any modification of the facility that would: add different pollutants to the discharge or increase the amount of pollutants in the stormwater discharge such as might result by adding a new industrial activity (SIC) that was not covered.

Comment: The use of "might" in this definition leads to substantial uncertainly on what actually triggers a requirement to seek modification. A clearer definition might be:

Example: S1D1: A significant process change is any modification of the facility that would result in a new or additional SIC code AND would add different pollutants to the discharge or increase the amount of pollutants in storm water discharge.

REFERENCE: S1F Coverage for Discharges to Ground Water Stormwater: discharges to ground will be regulated as part of permit coverage for all facilities under this permit.

Comment: Discharge to ground via wells, such as class V storm water injection wells and some infiltration system is an Underground Injection Control issue. The referenced subpart wording could be misinterpreted to designate that the industrial storm water general permit is also a Underground Injection Control (UIC) permit under SDWA. Suggest this section be revised to clarify the differing roles between UIC and the Stormwater General Permit.

Section S2 - Coverage Requirements

REFERENCE: S2B4 (Facilities with Significant Process Changes) Any facility anticipating a significant process change as identified in S1.D., Modification of Permit Coverage, must submit a completed application for coverage, marked as modification of coverage, as follows:

Comment: This section presumes that a process change will in fact create an increase in storm water pollutant discharges. As discussed in the comments on S1D1 (above) this assumption should be replaced by review of empirical data collected at the site under the sampling provisions. Recommend this section be altered to require any facility implementing significant process changes to review their sampling and visual monitoring data to determine if the change has created a significant increase in discharge volume or pollutant loading to stormwater discharges. Where such an increase is found then a request for a

modification of permit should be submitted within the required 38 days. An updated SWPPP showing actions to be taken to return discharges to within baseline values would be required, along with a schedule of implementation.

REFERENCE: S2F (Does Coverage Preempt government Requirements) Facilities with stormwater discharge to a storm sewer operated by any of the following municipalities shall send a copy of their application for coverage to the appropriate municipality:

Comment: The MS4s listed are for Phase I municipal permits. Will permittees be required to submit applications / modifications to Phase II MS4 governmental entities when phase II rule becomes effective? The Department could resolve this problem by providing a list of permittees covered under this permit to the Phase II municipalities when issuing their permits. Those municipalities could then opt to request copies directly from the permittees.

Section S3-Discharge Limitations

REFERENCE: S3B2. (Discharge Prohibited) Illicit discharges are not authorized by this permit, nor does it relieve entities responsible for illicit discharges, including spills of oil or hazardous substances, from obligations under state and federal laws and regulations pertaining to those discharges.

Comment: The Stormwater Permit does not identify any allowable discharges to surface water other than stormwater. There are a number of non-stormwater discharges to storm sewer allowed in the EPA MSGP permit. Request the WDOE identify the allowable non-stormwater discharges in the permit and not characterize them as "illicit discharges." The exclusion of non-stormwater discharges should be an exemption to S3B2. (Reference Federal Register Volume 65, No. 210, October 30, 2000, pg 64759-64760).

Examples of permissible non-storm water discharges are:

Ground water inflow and infiltration
Fire system testing,
Mists from cooling tower,
Condensate from HVAC system,
Landscape sprinkler water,
Foundation dewatering,
Ground or stormwater collected in electric/ telephone utility vaults

A better approach would be to provide a criterion for storm water personnel to determine what does or does not constitute a permissible non-storm water discharge.

Example: Non-process and non-storm water flows will be found in many storm water collection systems. These discharges are permissible non-storm water discharges if they meet the following conditions:

- The flows are specifically exempted in the EPA's Multi Sector General Permit (*Federal Register Volume 65, No. 210, October 30, 2000, pg 64759-64760*)
- They do not originate from any function of a production process, storage activity or transportation method covered under this or other wastewater management permits.
- The flows are the result of non-contaminated water sources such as ground water, or public drinking water entering into the stormwater system through infiltration, inflow, or other legitimate uses that do not add any industrial pollutants.

- The flows may result from human activity to remove water from vaults, foundations or other non-construction related activities
- The flows may be air condensation resulting from cooling or HVAC activities such as cooling towers and air conditioners.
- Irrigation activities that do not add fertilizers above agronomic rates.
- Management of these non-stormwater discharges will follow guidelines specified in the MGSP (*Federal Register Volume 65, No. 210, October 30, 2000, pg 64763*).

REFERENCE: S3D Ecology will not require monitoring for fecal coliform if the Permittee can document that there is no potential source of fecal coliform from any of their industrial activities.

Comment: Fecal coliform originates from a range of sources, some related to industrial activities, some deposited by outside forces (literally). Any industrial facility can expect some level of fecal coliform in its discharge due to birds, wild and domestic animals. Ecology should make clear the distinction between industrial and "incidental" fecal coliform sources. Incidental fecal coliform sources should be clearly stated as not constituting an industrial activity. As such it should not be considered as a "source of fecal coliform".

REFERENCE: S3D2 (Discharges into Impaired Water Bodies). If a Permittee discharging to waters listed under 303(d) fails to comply with the effluent limits above, the compliance schedule below immediately becomes applicable and shall be considered the applicable interim effluent limitations until compliance with water quality standards is achieved or a TMDL is completed.

Comment: See prior comments on the policy concerns with this approach to stormwater discharges into 303(d) listed waters. Also the permit fails to identify the criteria for exiting the compliance schedule (table) if effluent limits for impaired waters are being achieved. The current wording implies that once a single exceedance of effluent limit occurs that the entire table must be followed on a year by year basis, without regard to if the permittee has re-attained effluent standards. A specific exit mechanism needs to be incorporated into the permit language.

REFERENCE: S3E1 (Mixing Zone Descriptions) All appropriate best management practices established for stormwater pollutant control has been applied to the discharge

Comment: See prior policy discussion on the need and appropriateness of a mixing zone for discharges of stormwater into 303(d) listed waters. Also, WAC 173-201 requires that AKART be instituted prior to granting a mixing zone. Does WDOE intend for this statement to equate all appropriate best management practices to AKART? Please clarify.

REFERENCE: S3F. General Prohibitions. All facilities must manage stormwater discharges to prevent the discharge of: 1) Petroleum products as identified by an oil sheen or 2) Floating materials

Comment: Guidance on what constitutes a floating material by size. In practical application, the permittee will need to use screens or other techniques to minimize escape of floating material. Determining the screen size is based on size of material to be captured.

Section S4- Monitoring Requirements

REFERENCE: S4 Stormwater must be sampled according to the instructions below. The Permittee is not required to sample outside of regular business hours but should make an effort to make sure that this does not result in a failure to capture a storm event during an entire quarter.

Comment: Regular business hours are an ambiguous statement that needs clarification. First in consideration is safety for the sampling personnel. Sampling during periods of darkness is an unnecessarily dangerous activity. Second, Sampling on a dark rainy night is prone to create additional errors in sampling as darkness interferes with sampling protocols. Third a visual inspection cannot be properly conducted simultaneously with a nighttime sampling event as the discharge cannot be clearly seen in many cases. Fourth, sampling when production activity is minimal, such as weekends or night shifts, does not provide a worst-case representation of the storm water discharge. For all these reasons a new sampling time frame is needed.

Example: The permittee is not required to sample outside of regular business hours and in no case during hours of darkness. Regular business hours are those time frames when the facility is engaged in its primary production process, but; does not include additional shifts or weekends when partial staffing is at the site primarily for maintenance and incidental production activities.

REFERENCE: S4-1. All samples will be grab samples taken within the first hour of discharge.

Comment: The requirement to take a sample within one hour of "first discharge" is both unreasonable and unnecessary. It is unreasonable for those facilities with multiple discharges to successfully sample and visually monitor more than one or two outfalls per storm event. The pressure created to speed up sampling to cover more outfalls will inevitably lead to unsafe practices and worker injury. Our facilities have multiple discharges, two of them with over 20 discharges each, that may all require monitoring if they do not qualify for representative sampling. Use of automated sampling equipment is an expensive proposition for installation and maintenance with the appropriate samplers costing over $10,000 per copy plus installation construction. Further, it is not clear that automated systems are even available presently, which meet the requirements (S4.E Sampling and Analytical Procedure)

It is unnecessary as the determination of water quality is based on a 3-hour exposure test (see Ecology Fact Sheet), which implies that a sample can be taken at any time during the first three hours to represent the test protocol results. The assumption that the first flush of water from a system is the most polluted is unsupported. Many systems have multiple discharge sources, oil / water separators, catch basins and other artifacts that will delay the arrival of various streams of water, along with their pollutant load. This could result in multiple scenarios of pollutant loading from the assumed front loaded pattern to include cyclical patterns, back loaded, even loaded and a range of other options. Even then these may change based on rainfall dispersion, time between storms, industrial activities and season of the year. Hence, the mandate for a "grab in first hour" is rational only in its regulatory simplicity, not in its ability to aid in evaluating a "reasonable potential to pollute." Hence recommend that up to 3 hours be allowed for collection of samples.

Additionally, permittees on complex discharge system should have the ability to characterize the pollutant-loading. With complex discharge systems a "custom" sampling protocol may be more effective in evaluating the actual impact on the receiving waters.

Example: S4-1. Sampling is allowed as either 1) a grab sample collected within the first 3 hours of the start of discharge from the storm event or 2) Composite or individual samplings that are representative of the pollutant concentration and flow over time. Composite samples collection period shall not be less than 6 or more than 24 hours. At least two composite samples will be collected in the first 3 hours. A permittee may petition the Department for another sampling regime based on initial results from either sampling protocol 1 or 2. Lab results and sampler profiles from option 2 will be retained for 5 years from the event and provided to the Department on request.

REFERENCE: S4-3. The storm event sampled must be at least 0.1 inches of rain in a 24-hour period.

Comment: Related to S4-1 (above) this statement can be interpreted a couple different ways. The conservative reading would be that we wait for .1 inches of rain and then go forth and do our sampling.

The liberal reading would be that we sample first and then wait to see if we get the requisite amount of rain. The conservative reading provides the most cost effective means for triggering a sampling event. A review of weather patterns in Puget Sound show that many storms do not produce the required .1 inch in a 24-hour period. Other parts of Washington State have there own unique rainfall patterns that will result in many false starts if they have to sample each time they might get a .1 inch rainfall. S4-3 also does not address sampling when dealing with snowmelt. Is sampling required after .1 inch of snow, when .1 inches of snow has melted or must the water content be calculated and .1 inch of rain equivalent be considered?

Finally, S5D states that samples must be reported when using test procedures specified by S4 then shall include in calculations. We contend that the .1 inch requirement in this section (S4) is a test procedure specification and that readings taken with below .1 inches of rain should not be reported as it does not qualify as a storm event? For example, Turbidity, dissolved oxygen and pH can be sampled real time and logged in. In some cases samples taken may go to lab and be analyzed before people realize the rain event did not qualify.

Example Alternative: S4-3 The sampling activities must begin once a storm has deposited at least .1 inch of rain in a 24 hour period and an appreciable (<10%) increase in flow at the discharge has been determined. Sampling for snowfall events will occur after either 1) .1 inch of rain equivalent has fallen and is observed to melt and runoff on contact or 2) When outfall discharge is observed to increase at least 10% due to melting of snow pack. Sampling data for non-qualifying storm events will be discarded.

REFERENCE: S4.4 . The storm event sampled must be preceded by at least 24-hours of no discharge.

Comment: The term discharge should be replaced with rainfall or snowmelt. Some discharge pipes will have continuous discharges due to ground water infiltration or permissible non-storm water discharges. Hence, they would never attain a "no-discharge" status on which to base the 24-hour trigger clause.

REFERENCE: S4-2. All samples will be taken as close to the point of discharge as reasonably practical.

Comment: Practical experience has shown that the actual outfall may be inaccessible due to a number of reasons, such as high tides, diffuser designs, and hazardous locations. In a few cases there is no access to the line at all due to its design, such as closed lines from tall roofs where pressure head is a problem. Request provisions be incorporated to allow for "upstream" sampling such as in-line manhole(s) or discharge points to the drainage system. The provision should allow for calculation of discharge based on values from the combined flows when multiple sampling points are involved. The permittee should document the need for alternative sampling points, procedures and calculation methods used in the SWPPP.

REFERENCE: S4A1. Visual Monitoring. The visual inspection shall be conducted by personnel named in the SWPPP to verify

Comment: Clarify that the term "personnel named" can be either by individual or by position(s). The variable and unpredictable nature of rainfall makes scheduling a specific person for these activities virtually impossible.

REFERENCE: S4A-1. Visual Monitoring . All discrete outfalls shall receive visual inspection. Inspection shall include observations for the presence of floating materials, suspended solids, oil and grease, visible sheen, discoloration, turbidity, odor, etc. in the stormwater discharge(s).

Comment: As noted in comments on S4-2 (above) instances exist in which visual inspection sampling cannot be conducted at the point of discharge. An analogous situation occurs when the industry must sample at the point of discharge to a MS4 (S7-B). In either case manholes are the most likely alternative inspection location in these cases. Many of these manholes are at catch basins, oil / water separators and similar storm water structures. The nature of these locations precludes a meaningful "visual inspection" as floating debris and oil sheen are a normal part of some of these structures functions. The Departments development of sampling protocols should included consideration of the issues surrounding confined space entry and difficult access.

REFERENCE: S4A1 and S4-5: Visual Monitoring and Representative Sampling

Comment: When a representative sampling plan is established only certain outfalls will be sampled and visually inspected. Those outfalls legitimately not sampled also would not be subject to visual inspection, as the representative outfall would suffice for all those in the plan. Those outfalls not listed as representative may be visually inspected during other storm events when sampling is not in progress.

REFERENCE: S4D Facilities Discharging to 303(d) Listed Waterbodies or Subject to TMDL Determination: Permittees may suspend monitoring for a listed parameter if eight consecutive samples fail to detect the presence of the listed pollutant.

Comment: The presence of a listed parameter is not the same as an exceedance of a listed parameter's water quality standard. In the equivalent statement on benchmarks "eight quarters where reported values for all four parameters are equal to or less than the benchmark value" is used as a standard. Discharges of 303d listed parameters should subscribe to the same level of scrutiny. Further, as written, a permittee could never come into compliance as pH is always present in samples. The compliance objective is to demonstrate that no reasonable potential to violate water quality standards exists. A permittee that has 8 consecutive samples within acceptable parameters would certainly seem to have demonstrated that they are do not have this "reasonable potential" to exceed a water quality standard

Section S5 - Reporting and Recordkeeping

REFERENCE: S4-D. Additional Monitoring by the Permittee: If the Permittee monitors any pollutant more frequently than required by this permit using test procedures specified by Condition S4. of this permit, then the results of this monitoring shall be included in the calculation and reporting of the data submitted in the Permittee's DMR.

Comment: S5D states that samples must be reported when using test procedures specified by S4 then shall include in calculations. We contend that the .1 inch requirement in this section (S4) is a test procedure specification and that readings taken with below .1 inches of rain should not be reported as it does not qualify as a storm event. For example, Turbidity, dissolved oxygen and pH can be sampled real time and logged in before people realize the rain event did not qualify. Inclusion of this data will create a false impression of the discharge from the permittees system when compared to those discharges meeting the 0.10 inch sampling requirement. (Please see discussion on S4-3 for additional concerns.) G11. ADDITIONAL MONITORING would only apply if the Department modified the permit or incorporated a new sampling protocol under order.

REFERENCE: S5-E3. Submit a detailed written report to Ecology within five [5] days unless additional time is authorized by Ecology. The report shall contain a description of the noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated

Comment: The new permit requires a 5-day written report for a non-compliance condition. It is requesting that the time for submitting a written report concerning a non-compliance condition be extended to 15 days. This would correspond with the hazardous waste regulation reporting for

hazardous material releases. The additional time would provide an opportunity to 1) identify the problem through inspections as prescribed in S3D-2 (table) and 2) develop a preliminary plan to respond as prescribed in S9A-4. Allowing the extra 9 days will convert the written report from a "notification" to a plan of action document. Eliminating back and forth paperwork caused by premature notification will save the Department and permittee from needless waste of valuable personnel resources. It will also verify that the permittee is taking the prescribed actions to deal with the problem.

Section S7 - Compliance with Standards

REFERENCE: S7B. Where a mixing zone is not allowed, stormwater discharges must comply with surface water quality standards at the point of discharge.

1. The point of discharge for discharges to a municipal storm sewer is where the stormwater enters the storm sewer system.

Comment: See prior policy discussion on mixing zones for stormwater discharges into 303(d) listed waterbodies. Also, it is an unreasonable burden to require an industrial discharger to meet a water quality standard for discharge to a MS4 when the MS4 is under no practical obligation to meet those water quality standards. The disconnect occurs between the two permits in force. The industrial permit has the provisions of AKART to which is further tied an expectation that BMPs will achieve water quality standards. The municipal permit is deliberately designed to use a lesser standard – maximum extent practicable, which may or may not meet water quality standards. Hence, industrial dischargers are meeting a much higher standard discharging into a MS4 than that imposed on the MS4 by their permits. This is further complicated by MS4s that do not have municipal storm water permits and are hence not under any direct permit requirement to meet any standard.

A second inconsistency with Department policy is the differentiation between essentially identical situations. Current TMDL policy allows a discharger to a tributary stream as though it were a non-303d stream, even if that stream discharges into a 303d listed waterbody. The exact same discharger would be required to meet water quality standards at the point of discharge into an MS4, essentially a tributary stream, if that MS4 discharges to a 303d listed waterbody.

Possible Alternative: S7B . Where a mixing zone is not allowed in the receiving waterbody for a MS4, stormwater discharges from industry must comply with the same standards applied to the MS4 at the point of discharge.

1. The point of discharge for discharges to a municipal storm sewer is where the stormwater enters the storm sewer system

REFERENCE: S7C. Stormwater treatment systems must be fully functional for all storm situations that do not exceed the water quality design storm or the water quality design flow rate, whichever is applicable.

Comment: Recommend the Department Include a statement that the permittee is exempt from conditions of S7c and S5E for events involving exceedances of design storm. Current wording is confusing if not contradictory.

Section S9- SWPPP for industrial facilities

REFERENCE: S9A1. Illicit Discharges: The SWPPP shall include measures to identify and eliminate -- --

Comment: Please see comments on section S3B2 above on permissible non-stormwater discharges.

REFERENCE: S9.A4 . Modifications: The Permittee shall provide a schedule in the SWPPP for implementation of any modifications that are necessary because of a notice from Ecology, facility changes, or self-inspection. Unless otherwise authorized by Ecology in writing, a schedule for implementation must be completed and entered into the SWPPP within 30 days of a notice/determination of needed modification. BMPs identified in the modification plan must be implemented with due diligence. Unless otherwise authorized by Ecology in writing, non-capital BMPs shall be completed within two weeks of completing the plan and capital BMPs within six months. Modifications will comply with Special Condition S9.A.5. below. Complying with this "Modifications" provision does not limit the potential liability for enforcement action where the Permittee has failed to implement required BMPs or where stormwater discharges violate water quality standards.

Comment 1: Request reinstate the time frames specified in the original (1992) WDOE Stormwater permit of 18 months into the new permit. The timeframe specified in the draft permit of six months is not sufficient to perform engineering study, determine alternatives, decide on an action, obtain funding for the action, prepare job scope, bid specification, bidding process, obtain necessary permits, selection of a contractor, obtain equipment, and complete construction. The provisions to request a time extension from WDOE should remain in the new permit

Comment 2: Please verify that the current permit allows 30 days to plan a modification and 2 additional weeks to implement? Would not the due diligence clause in the beginning of this section be a more appropriate measure to allow for wide range of issues that can be incurred in managing storm water operational and structural controls? A more workable alternative, obtaining the same affect, is to have the permittee document in the SWPPP that a non-capital BMP is being implemented that will take longer than the allocated two weeks, and is estimated to be completed by a specific date. The permittee would include a brief description of the project, why it is being implemented, and a schedule. On completion the permittee will annotate the original entry. Exchanging paperwork with WDOE will not speed up the work, change its outcome or increase protection of the environment. What it will do is increase transaction costs for both the Department and permittee, wasting valuable resources on this paperwork.

REFERENCE: S9A5b. Existing permitted facilities that comply with standards are not required to redo their SWPPP and BMPs to incorporate changes when a new edition of the stormwater management manual is released. However, existing facilities shall apply the applicable technical standards and BMPs as found in the most recent published edition of the SWMM, or other equivalent manuals, that are available when updating their SWPPP to accommodate changes at their facility or when additional BMPs are required to maintain compliance with permit conditions.

Comment: Selection of BMPs for controlling storm water discharges should be more a matter of permittee preference than a requirement to use a specific manual. Previous permits were premised on attaining acceptable discharge levels based on use of BMPs. When this was the case it was reasonable for WDOE to require specific BMPs be used. Now that the emphasis has shifted to an outcome based (sampling) approach in this proposed permit, it should be at the choice of the permittee to determine which BMP's to use from any source to meet the specified benchmark or WATER QUALITY STANDARDS values.

Alternative Example: S9A5b: Existing permitted facilities that comply with standards are not required to redo their SWPPP and BMPs. Those facilities seeking to meet standards through increased BMPs application are encouraged to employ the latest version of the Storm Water Technical Manual as providing a presumption of the best available BMPs. Permittees are encouraged to submit innovative BMPs (operational, source or treatment) to the Department for consideration for inclusion in future manuals.

REFERENCE: S9-6b1. Site Map: The site map must be drawn to an identified scale or include relative distances between significant structures and drainage systems. It must provide identifiers (names) of significant features and be of sufficient size and detail to identify the following: The site map will show the stormwater drainage and discharge structures, an outline of the stormwater drainage areas for each stormwater discharge point (including discharges to ground water), paved areas and buildings, areas of pollutant contact (actual or potential), surface water locations (including wetlands and drainage ditches), areas of existing and potential soil erosion and vehicle service areas;

Comment: Sadly, recent events have made the publication of such a map in a publicly available document a significant security issue. This map would provide substantial information to infiltrators on plant layout, access routes and the location of some highly vulnerable and dangerous activities on an industrial site (i.e.: hazardous material storage, propane tanks). A recent Federal rule was substantially modified to prevent the release of similar information to the public. Site maps should be excluded from publicly released versions of the SWPPP. The map itself should be retained on site and made accessible only to qualified Department personnel with a need to know. When the public identifies a specific valid need to know information about the site, its release must be agreed to by the permittee.

REFERENCE: S9B1d: Material List:

Comment: The short narrative required in the inventory need only address only each type of material, not a detailed discussion of the impact of each individual material item. As written this requirement is an egregious workload requirement to document potentially thousands of "potential sources." This would at most be applicable as a one-time requirement to a new facility attempting to identify its sources. Existing facilities will in the course of maintaining their SWPPP address potential sources of pollutants.

REFERENCE: S9B3a (iv) and (v). Concerning minimum sets of BMPs that must be included in the SWPPP.

Comment: Please specify that these requirements may, where applicable, be incorporated by reference. The referenced material should not be required to be submitted to the Department with the SWPPP unless specifically requested.

REFERENCE: S9B5. Other BMPs: Nothing in Special Condition S9. of this permit is intended to preclude the application of innovative treatment, source control, reduction or recycle, or operational BMPs beyond those identified in Ecology's SWMM. Additional BMPs beyond those identified in Ecology's SWMM could be necessary to achieve compliance with standards. However, treatment BMPs that include the addition of chemicals to provide treatment must be approved by Ecology before implementation.

Comment: This section is amplified on page 37 of the associated fact sheet. In both cases the implication is that these are for "BMPs beyond those identified in Ecology's SWMM." This is an overly restrictive implementation of "other BMPs" in that permittees may want to use an "other" in lieu of rather than in addition to a SWMM BMP. It may also be reasonable to use a BMP that is less effective than one proposed in the BMP as long as it meets the goal of attaining Benchmark or water quality standards values. (Also, see S9A5b comments) A statement should be included in the fact sheet that delineates the differential between using a SWMM BMP and an "other / innovative" BMP.

REFERENCE: Definitions:

Comment: Definitions in the permit can have substantial impact on its implementation. Request the Department evaluate the following definitions and make revisions as noted.

Discharge targets – This is a carry over from earlier efforts to obtain engineering data. It is now a moot point with benchmarks

Equivalent BMP – Please clarify definition see comments on S9B5 above and discussion in WDOE's Fact Sheet

Existing Facility – Definition is circular. Please describe what is intended by the term "facility" in this context.

Illicit Discharge – Please see above discussion on permissible discharges related to section S9A1

Boise Cascade Corporation

EPA's Multi-sector stormwater permit (MSGP) recognizes certain non-stormwater discharges from industrial facilities that have little potential to contribute to a violation of an applicable water quality standard. EPA recognizes these discharges as non stormwater, however, authorizes its discharge under the permit. The discharges identified by EPA include:

"…discharges from fire fighting activities; fire hydrant flushings; potable water sources; including waterline flushings; irrigation drainage; lawn watering; routine external building wash down without detergents; pavement wash waters where spills or leaks of toxic or hazardous materials have not occurred (unless all spilled material has been removed) and where detergents are not used; air conditioning condensate; compressor condensate; uncontaminated groundwater or spring water; and foundation or footing drains where flows are not contaminated with process materials solvent that are combined with stormwater discharges associated with industrial activity."

The fact sheet associated with Washington DOE's 2000 General Stormwater Permit explicitly states that discharges of the nature identified by EPA are not authorized under the permit. However, the discharges should be assessed and if they contain pollutants that commingle with stormwater, then appropriate BMPs should be applied and Ecology should be contacted regarding the need for a separate permit. Generally, Ecology has refrained from issuing separate permits for discharges such as these into the stormwater system. This has left industry covered by the permit with incidental non stormwater discharges that are prohibited from entering the stormwater system and no practical alternative for lawful disposal.

The 2002 draft Industrial Stormwater General Permit does not provide any additional clarification as to Ecology's position on these incidental non-stormwater discharges. The recently published Stormwater Manual for Western Washington, Volume IV suggests best management practices for some of these discharges including BMPs for Landscaping and Lawn/Vegetation Management. This suggests that Ecology recognizes the likelihood of these incidental discharges and allows them to be discharged with stormwater.

We request the permit specifically identify these incidental sources of non-stormwater and authorize its discharge in the permit.

Citizens for a Healthy Bay

Thank you for the opportunity to comment on Ecology's draft Industrial Stormwater Permit. Citizens for a Healthy Bay's comments to this permit are below.

General Comments

- Given Ecology's stated resource limitations and your comments in the May 6 public meeting that permit information would be placed on the web for public review as "…with this many permittees

Ecology's not going to look up the records [to confirm proper sampling has been conducted by permittees]…," and that Ecology '…will not be able to review many if any applications for "No Exposure" certificates…', we request that the following information be included in the public review section to facilitate public review:

Latitude and longitude of permittee discharge outfall(s)
Picture or description (including diameter, material) of discharge pipe(s)
Water body to which the discharge goes
Sampling timing and results
Capability to search dischargers by county and alphabetically

- As stated in Ecology's Permit Writers Manual, "Discharge to navigable waters is not a right." This language should be added to all Ecology permits, including the Industrial SW permit. Also added to every permit should be the "zero discharge" goal in the Clean Water Act as referenced in Ecology's *Permit Writers Manual*.

Specific Permit Comments

- S.2.D Public Notice Requirements: Newspaper circulation is not sufficient public notice. Ecology must provide timely public notice to a list of interested parties as required by 40 C.F.R. § 124.10(c)(1)(ix), the federal regulations that require notice of permitting activity be provided to a list of interested persons.

  CHB wholeheartedly agrees with section S.2.F, that permittees must comply with local government requirements.

- S.C.3 Compliance Schedule: As written there is no true schedule for compliance; i.e., dischargers have 5 years to attempt to meet requirements and then are off the hook as they are required to only submit a report at that time. This is illegal per 33 U.S.C. § 1342(p)(4)(A). This section should be changed to comply with 33 U.S.C. § 1342(p)(4)(A).

- Ecology's administration of requests for standard mixing zones in this permit will not satisfy the requirements of WAC 173-201A-100. Mixing zones, like discharge of pollutants to navigable waters, is not stated by Ecology (in the *Permit Writers Manual* and in the WAC) to be a right but a strictly regulated temporary privilege. This should be reflected in the Industrial SW permit.

City of Bellevue Utilities

Page 7, Special Condition S1.C.6 states that facilities that discharge to a waterbody with a control plan can't be covered under the general permit unless the permit provides the level of protection required by the control plan. In a footnote, control plans include TMDLs, restrictions for the protection of endangered species, etc. I question how a permittee is supposed to know if the general permit is adequate or not? How is a permittee supposed to know that a "control plan" is in place? What are "restrictions for the protection of endangered species?" If a facility is excluded under this provision, Ecology will need to issue an individual NPDES permit for that facility. If a facility applies for coverage under the general permit and then is excluded from coverage by the Department of Ecology per this special condition, is the facility out of compliance until an individual permit is issued?

Page 13, Special Condition S3.B.1 states that discharge of process wastewater is prohibited. The condition is written in a way that is difficult for permittees to interpret. Try to use more descriptive language and give examples of common process wastewater, such as vehicle wash water, leachate, etc.

Page 16, Special Condition S3.D state that discharges must comply with the water quality standard end-of-pipe when discharging a listed pollutant to a 303(d) listed waterbody, except temperature and fecal coliform unless there is a source of fecal coliform in the industrial activity. The exclusions for

temperature and fecal coliform are listed in the first paragraph of the special conditions. They should be repeated in the effluent limit tables under sections 1 and 2.

Page 18, Special Condition S3.D.2 lists the actions that must be completed for existing facilities. Each action must be documented in the SWPPP. Does the SWPPP have to be submitted to Ecology each time that it is updated after the first submittal of March 10, 2003? If so, list that in the Summary of Permit Report Submittals.

Page 19, Special Condition S3.E.2 defines the size of a standard mixing zone. How is a mixing zone defined for discharges to a municipal separate storm sewer system (MS4)?

Page 20, Special Condition S4 (1 - 5). I realize the need to make monitoring easy for permittees, but a grab sample in the first hour of discharge once per quarter? Not only is this monitoring scheme NOT representative of the discharge, it is of little value. It has been recognized for a long time that first flush does not occur in the Pacific Northwest, except maybe during high intensity summer storms. Ecology is proposing a much more rigorous monitoring regime in the Stormwater Treatment Facility Performance Evaluation Guidance Document. Robert Pitt was contracted to do an evaluation of the statistical approach in this guidance. I suggest that the permit authors read the Pitt recommendations and apply it to the monitoring requirements in the general permit if they are to have any meaning at all.

Page 21, Special Condition S4.A.1 requires visual monitoring at all discrete outfalls. It is unclear how the term "discrete outfall" applies to industrial facilities that discharge through one or more catch basins into an MS4. Further into the same section, it is stated that the permittee must notify Ecology if a non-stormwater discharge is discovered during the dry season visual inspection. It is very common for storm drain systems to contain baseflow which is not "illicit" or process wastewater. Notification should only be required for illicit discharges.

Page 21, Special Condition S4.A.2 requires sampling for Petroleum - Oil and Grease using method number 413.1 or 413.2. These methods use Freon and have been phased out. I suggest that NWTPH DX is a more appropriate measure of petroleum hydrocarbons for stormwater monitoring.

Page 29, Special Condition S7.C uses the term "fully functional" for stormwater treatment systems. Please define this term.

Page 30, Special Condition S8.A outlines bypass procedures for stormwater treatment facilities. Bypass should be defined to mean bypass of flows at or below the design flow rate or volume for this context. Stormwater treatment systems are sometimes designed to bypass flows above the design storm.

Page 33, Special Condition S9.A.5 requires the implementation of the current and future editions of the SWMM for new facilities and existing facilities when they redevelop. However, the minimum requirements for site development are implemented by the municipal jurisdiction that the facility is located in, not by the Department of Ecology. If that jurisdiction has not adopted the latest version of the SWMM, how does the Department of Ecology plan to enforce this requirement? Part c states that redevelopment projects should apply the minimum requirements for the most current SWMM available during final design of the project. When is this? 50% or 90% design? Please be more specific.

City of Kennewick

S1.F: "Stormwater discharges to ground will be regulated as part of permit coverage for all facilities under this permit." This needs considerable clarification. Where is the "point of discharge" for an infiltration facility? Groundwater and surface water standards aren't the same, which will apply? Will sampling be required, and if so, where will the sample be taken? How is this being coordinated with the revisions to the State UIC?

S2.B.3.c.ii: Last sentence. How do agencies receive approval of the SWPPP contents? At the workshop it was stated that approval would only be obtained if a site visit is required. This is too late in

the process to find out that a SWPPP is inadequate. It is unreasonable to ask an agency to invest in the preparation of the SWPPP and expend manpower and funds for training without an approval mechanism.

S2.B.4.c: Same as above.

S2.C.2.a: Same as above

S3.D.1: "---must comply with the State's water quality standards for the named pollutant(s) at the point of discharge." Should read "---must comply with the State's water quality standards for the named pollutant(s) at the limits of the mixing zone."

S4: This section requires guidance for monitoring and sampling at infiltration facilities.

S9: This section requires an approval process for the SWPPP. Also, delete the reference to use of the Western Washington Manual in Eastern Washington. I would suggest something along the lines of, "Facilities in eastern Washington shall use BMP's appropriate to the hydrogeology of their region."

It was stated during the workshop that there would not be additional permit fees for this permit, for municipalities that already have an NPDES permit for their waste water treatment plants. Please confirm.

Del Monte Foods

We have reviewed the draft "Industrial Stormwater General Permit" issued for public comment on March 29, 2002. Our comments pertaining to the subject draft permit are provided below.

Comment 1: S1B, Page 5, Item 3: When is Coverage under the Industrial Stormwater General Permit Not Required?

- Item 3 should be expanded to indicate that industrial facilities that discharge all of their stormwater to the ground and have no source discharge to surface water or a municipal storm sewer are not required to submit "No Exposure" Certification and/or other certification.
- This section should be expanded to clearly indicate those industrial facilities that discharge stormwater to permitted industrial wastewater land application sites for management are not required to secure a permit.

Comment 2: S3D: Stormwater Discharges to Impaired Waterbodies

- There are likely many facilities that do not discharge storm water directly into impaired water bodies but indirectly to impaired water bodies (i.e., municipal stormwater sewer with may users (including farmers) that eventually flows to an impaired water body). As provided in the permit, it is not clear if such facilities are also obligated to test for 303(d) listed parameters.

Comment 3: S4B3, Page 23: Chemical and Allied Products, Food and Kindred Products

- Last Paragraph First Sentence – Remove "ammonia" and replace with "nitrate/nitrite" since ammonia will not be sampled/tested. Should read "The Permittee may suspend stormwater sampling and analysis for nitrate/nitrite, total phosphorus, and BOD5…"

Comment 4: S9A4, Page 33: General Requirements/Modifications

- Capital BMPs – Capital budgets are typically developed on an annual basis and not on a six month basis. This means modification of capital budgets on a six-month basis can be difficult at best. Further, bids and design work are typically required for capital projects. As you probably can appreciate, all of these activities can take a considerable amount of time. Accordingly, we request that the permit be modified to indicate that capital BMPs need to be completed within one-year and not within six months.

Comment 5: S5, Page 26 – Reporting and Recordkeeping Requirements

- Reporting – Annual reporting of stormwater data would be more efficient and reduce paperwork. Note that annual reporting of stormwater data is common place in other states (e.g., California).
- Reporting Due Dates – Selected laboratories sometimes have a hard time turning around laboratory testing data. Therefore, at least 45-days should be provided from the close of each quarter for submittal of required monitoring data.

Thank you for the opportunity to comment on the draft permit.

Doug Lyons

Any increased costs associated with this permit should be born completely by the government. If there are no funds to do so then the process should not be invoked. The Federal government does not have the right to impose regulations on states without funding the same and to place the burden on business and individual property owners is unfair and unlawful.

Farallon Consulting, LLC

Farallon Consulting, L.L.C. (Farallon) has prepared this letter to provide comments to the Industrial Stormwater General Permit Revisions on behalf of the Washington Trucking Associations (WTA). The WTA, a Trade Association, represents more than 750 commercial trucking companies, most of who operate throughout the entire state of Washington. Their operations range from large commercial facilities to small one-man operations.

The proposed revisions to the Industrial Stormwater General Permit represent a concern to the WTA and its members for the following reasons:

- The permit requires that sampling of stormwater discharge be conducted twice a year, once during the wet season and once during the dry season. The cost to commercial trucking firms is of great concern because many of them have multiple operational locations located throughout the state. Commercial trucking profit margins currently range between just one and three percent.
- Will responsibility for industrial stormwater discharge remain with the motor carrier when vehicles are parked away from the carriers' facilities, i.e. truck rest areas, customer facilities, commercial truck stops, etc.?
- What will happen if required stormwater discharge samples contain concentrations above the allowable discharge limits?
- WTA member's operations mainly consist of commercial for-hire trucking and do not typically include on site processes. Are proposed Stormwater General Permit requirements applicable and/or appropriate for their type of operations?

Kennedy/Jenks Consultants

The following represent Kennedy/Jenks Consultants' comments and concerns regarding the conditions of the proposed permit, as well as areas where we believe additional clarification is required.

General Comments

The permit should specify that any of the facilities listed at 40 CFR Subpart 122.26(b)(14), **including categories 1 through 9**, are eligible for the no exposure exemption, provided that they meet the requirements for this exemption.

The permit should address whether inactive facilities listed under categories 1 through 9 and 11 needs to be covered under the permit.

The definition of "existing facilities" should be clarified, since we believe that it is Ecology's intent to define "existing" in at least two different ways, depending on the issues to be addressed. Specifically, condition S2B.3.b. specifies existing facilities as those facilities that were in operation before November 18, 1995. Therefore, by this definition, any facility that obtained coverage between 1995 and the present would be considered a "new" facility. In various locations throughout the permit, the requirements for "new facilities" differ from existing facilities, including the need for public notice and application for a mixing zone, as well as other requirements. We do not believe that Ecology intended to require facilities that are now covered under the existing permit, yet obtain coverage after November 18, 1995 to be subject to public notice and mixing zone application requirements, unless they are submitting a modification of coverage.

Specific Comments

Condition S1.B.3 specifies that facilities that discharge all of their stormwater to the ground and have no point discharge to surface water or to a municipal storm sewer are not required to obtain coverage under the permit. Most infiltration facilities and/or other discharges to the ground (and not regulated under the Underground Injection Control regulations) have been designed to a maximum size storm event. It would be impossible to design an infiltration system that will receive stormwater for every possible storm event. Does Ecology expect a facility to apply for coverage should a maximum size storm event exceed the capacity of any infiltration system that may be present on a particular site?

Under Condition S4.A.2, Ecology references analytical methods for oil and grease analysis to be EPA Method 413.1 or 413.2. We understand that these methods are being replaced with EPA Method 1664 (eliminating the use of Freon as an extractant).

Under Condition S4.A.3, Ecology requires monitoring for hardness in addition to total copper and total lead. Monitoring for hardness should not be required where the discharge is to marine water, where hardness is inappropriate.

Under Condition S4.D, Ecology should not require monitoring for a TMDL-limited constituent where the facilities' process does not expect to contain that particular constituent. In addition, Ecology should clarify that monitoring for TMDL-limited constituents is required only where stormwater is discharged directly to the listed segment of the particular water body.

Under Condition S4.D, facilities discharging to 303(d) listed water bodies or subject to TMDL determinations must monitor for TMDL-listed constituents. In some locations, the number of TMDL-listed constituents is large, and monitoring for all constituents on an ongoing basis would be cumbersome and generate large volumes of data at a significant cost to the permittee. Ecology should reconsider the requirement for monitoring for all constituents and should consider indicator compounds if monitoring is conducted at all.

Under Condition S9.B.2, Ecology states that the SWPPP must contain a discussion regarding the estimated volume of discharge from each discharge point. Due to the nature of stormwater and the variability of flows being dependent on the size of the storm event, estimating the volume of discharge from each discharge point will be meaningless. Ecology should eliminate the need to estimate the volume of discharge or clarify how the volume of discharge should be estimated.

We hope that our comments assist Ecology in finalizing the proposed Industrial General Stormwater Permit for the State of Washington.

Kitsap County

Page 21 of the Draft Industrial Permit lists Analytical Methods EPA 413.1 and 413.2 as the method for Petroleum-Oil and Grease. These are the old Freon extraction methods. The newer hexane extraction methods are EPA 1664 and EPA1664A. If you need to locate these methods, EPA has an index on their web site (i.e. "Index to EPA Test Methods Dec 2001 revised ed").

Why do you list the benchmark value of Total Phosphorus at 0.5 mg/L when the Federal Register Table 3 lists it at 2.0 mg/L? Thanks, Stan Olsen

Longview Fiber Company

Longview Fibre Company is appreciative of the opportunity to provide comments on the proposed NPDES Industrial Stormwater General Permit, dated March 29, 2002. Longview Fibre Company is aware of the efforts by the Department of Ecology in revising earlier drafts based on the comments and concerns expressed by those participating in the negotiation settlement discussions. However, it appears that a significant amount of addition work is needed. In the interest of getting to a reasonable workable general permit we offer the comments contained in this letter.

We support the comments that we understand will be submitted by the Association of Washington Business (AWB) and the Northwest Pulp and Paper Association. They will be submitted under separate cover and, hopefully, will not be duplicated in this letter.

In addition, it is not clear in the draft permit how stormwater which was discharged into a man-made water conveyance, such as a ditch, would fit into Section S9.E.2 of the general permit. If it is meant to be in the "Other" category then it is very difficult to determine what the mixing zone would look like from the draft permit.

Compliance with the monitoring requirements in S4. will be very difficult and expensive because of the time frame, frequency and extensive testing required.

Section S7.B. appears to require compliance with water quality standards at the point of discharge for some instances where there is a discharge into a stormwater sewer system. This will be very difficult or impossible to comply with, and seems to be unnecessary since it is a sewer system.

Section S11 is too limited. For example, it does not appear to address the situation where the facility captures the stormwater and returns it for treatment with the process water. Section S11 should not be limited to only cases where the industrial activity has ceased.

Marc Pacifico

The following are my comments on the Draft Industrial General Stormwater Permit:

S1.C.7. Will "excluded facilities" need to be covered under an individual permit? The general permit should include a mechanism that triggers this application process. This should not be done through Administrative Orders issued to each "excluded facility" that will need to apply for a different type of permit coverage.

S1.D.1. Proving a "significant process change" will be difficult for an inspector to prove. Failure to request a modification under this condition will likely be considered a Category 3 violation (low potential for threat to public health and/or the environment) and receive low priority for an enforcement action unless there is a strong link showing that the process change has led to Category 1 violations (actual, imminent or acute threats to public health, the environment, and/or species listed under the Endangered Species Act), or Category 2 violations (chronic or potential threat to human health, the environment, and/or species listed under the Endangered Species Act).

S1.D.2. This condition refers to the addition of a mixing zone requiring a modification. Condition S3.E. refers to a "standard" mixing zone for existing facilities. Condition S2.B.5. has a procedure to add a mixing zone. Does this mean that all existing facilities automatically have the standard mixing zone and only new facilities will need to apply for one? How will inspectors know who has a mixing zone, who has a standard mixing zone, and who has an expanded mixing zone and how big it is? The mixing zone conditions of the draft permit are confusing and should be clarified.

S1.E. Significant Contributor determination should not be made through an enforcement action unless there is a strong link showing that the facility has Category 1 violations, or Category 2 violations that would need to be addressed by the action. Appeals of the Significant Contributor determination should not be assigned to enforcement staff unless associated with an enforcement action that is seeking to correct Category 1, or 2 violations through an action that is requiring permit coverage.

S1.F. States that stormwater discharges to ground will be regulated as part of permit coverage for all facilities under this permit. Condition S1.B.3. states that industrial facilities that discharge all of their stormwater to ground do not require coverage unless they are determined to be significant contributors of pollutants to ground water. This is confusing, does the permit cover facilities discharging to ground or not? Does there need to be both a surface and ground water discharge for a facility to be covered? See comment above for condition S1.E., this would also apply to a Significant Contributor determination for a ground water discharge.

S2.B.1. If an existing facility fails to submit the identification of receiving waterbody form by September 30, 2002, it will be considered a Category 3 violation and a low priority for an enforcement action.

S2.B.2. If a pending applicant is required to submit the identification of receiving waterbody form, or a copy of the SWPPP, and they fail to do so, it will likely be considered a Category 3 violation and a low priority for an enforcement action unless there is a link to Category 1, or 2 violations.

S2.B.3. Failure of new or existing facilities to obtain permit coverage will be considered a Category 3 and a low priority for an enforcement action unless it can be determined that the facility also has Category 1, or 2 violations that could be corrected by an action that brings them under the permit. The likelihood of an enforcement follow up for failure to apply within 30 days of ecology notification is very low unless the Program is willing to dedicate a full time enforcement person exclusively to this general permit. Experience has shown that enforcement actions to bring facilities under permit coverage are very time consuming and have a poor success rate.

S2.B.3.c.ii. Staff may not available to inspect new facilities to ensure these requirements have been met prior to start up. Does Ecology intend to review and approve SWPPPs sometime in the future? Are all facilities (new, existing not covered, previously covered, existing coverage) expected to submit SWPPPs? If so this should be clarified.

S2.B.5. Requiring all category 11 facilities that were not required to have coverage under the pervious permit to submit an application for coverage, or an application for "no exposure" is unrealistic. Failure to submit this would be considered a Category 3 violation and a very low priority for an enforcement action.

S3.D.1. and 2. In the absence of an effluent limit established by a TMDL, is the effluent limit the Water Quality Standard as found in WAC 173-201A? The interim courses of action described in the 5 year compliance schedule are vague and subject to interpretation by both the facility and inspector. Options implemented by facilities are likely to be poorly thought out solutions such as hay bales. Trying to enforce this condition will be difficult without specifically required BMPs or actions. Specific BMPs for different industrial categories should be included as permit requirements (this was suggested by one of our AGs assigned to a penalty appeal for Stormwater Permit violations). Five years can go by without ever getting a facility discharge to meet water quality standards. This appears to be a

"compliance off ramp" for existing facilities that should already have had these BMPs in place for years under the previous permit.

S3.D. A request for an expanded mixing zone will be difficult to evaluate according to the criteria established in WAC 173-201(A)-100(10). Much of this will need to be based on theoretical assumptions, or computer modeling to insure that the Department can make the determinations required. It will be very difficult to quantify the adequacy of the mixing zone size for storm events that exceed the size of the design storm.

S4. Getting the permittees to sample is going to be difficult. We need to be prepared to offer a lot of technical assistance with questions that will come up on how to sample, where to sample, what to sample, what lab to use, cost of analysis, etc. Even though this is in the permit we will likely get calls from permittees who do not understand this. For permittees who do not comply with this requirement a coordinated enforcement response should be taken centrally at the Program level rather than doing it region by region because the potential workload is very large. If consistent attainment of a benchmark value is achieved, reporting should be discontinued, the permittee should submit a letter making a request to discontinue sampling, and a response should be sent approving/disapproving the request, WPLCS will need to be adjusted according to our response. The qualifying storm event for triggering sampling has been difficult for sophisticated permittees such as wood treaters to work under, for facilities with few employees this will be a big problem. It will also be a problem to enforce, should we be looking for a rain gauge at every facility we visit? We should just forget the "first flush" theory and have them collect samples from the first runoff event of the month.

S4.A. Site visits to determine no environmental risk for facilities receiving "extreme hardship fee reductions" will be an big commitment of inspector time that will not be available for other priorities.

S4.A.1. Will visual monitoring results need to be reported? Are floating materials, odor, etc. considered permit violations?

S4.A.3. WPLCS can not be set up to look for the additional metals sampling if the zinc trigger is exceeded, this will need to be evaluated manually, who will do this?

S4.B.2. Sample 4 times during the 3 month period, why the inconsistency, this should be monthly to avoid confusion and potential for unnecessary violations. There could also be confusion when suspensions are taken for attaining benchmark values since Nitrate/Nitrite do not qualify for suspension. Nitrate/Nitrite should also be considered for suspension.

S4.B.4. One of the biggest problems we see with junkyards is oil and grease, not metals. Oil and grease monitoring must be included for junkyards.

S4.D. Ecology must be prepared to let permittees know what the parameters are on the 303(d) list that are causing impairment for waterbodies where these facilities are located. Effluent limits should be established for these facilities under individual permits, they should not be covered under the general permit. How do we determine that facilities are contributing to impairment if they are located a considerable distance from the impaired waterbody, must there be a discrete connection, can we assume overland, or sheet flow, underground flow?

S5. The falsification of information submitted to Ecology shall constitute CRIMINAL activity and will be referred to the Criminal Investigations Division for investigation and possible criminal prosecution.

S5.A. Why are we continuing to require monitoring results to be received by Ecology by certain dates. "Received By" is the criteria that the permittee has the least control over, why don't we go with something like postmarked by? I have had to listen to many complaints from permittees who received a letter for late receipt of a DMR when it was submitted well within the time required and delivery was delayed by the Post Office. These are the kinds of things that make the Department look bad and make

our jobs difficult. We should look at eliminating as many of these archaic artifacts as possible from all of our permits in favor of workable solutions (see comment S4. above for another archaic artifact).

Currently the regions receive DMRs, enter them into WPLCS, screen for violations, prepare and send warning letters, and enter the warning letters into WPLCS. When the Sand and Gravel DMRs were added it caused a major workload increase. The regions will not be able to absorb the additional workload of doing this for the Stormwater General Permit without additional staff. These duties would best be handled centrally by the Program instead of regionally.

S6.C. The minimum conditions should be verified by inspections prior to granting no exposure certification. Different inspectors have different opinions on what constitutes exposure of industrial materials and activities that will not be consistent. The no exposure certificate is another permit "off ramp."

S6.E. Failure of facilities to renew no exposure certifications will be considered a Category 3 violation and a low priority for an enforcement action unless it can be determined that the facility also has Category 1, or 2 violations that are a result of the exposure.

S6.F. It will be difficult to insure compliance with this without frequent inspections of all facilities that have no exposure certification. If a facility has the certification and is later found to have some exposure an enforcement response should not be expected unless the facility also has Category 1, or 2 violations.

S7. In cases where a mixing zone is allowed it will be necessary for inspectors to be out in the receiving water (wading, or in a boat) and to measure the distance from the point of discharge to the edge of the mixing zone to sample to try and prove a water quality standard violation. This will be logistically difficult for inspectors. Compliance should be at the point of discharge and mixing zones should not be considered under this permit. Effluent limits should be calculated considering dilution to determine end of pipe limits just like we do for individual dischargers, or just make them meet the water quality standard at the end of the pipe. There could also be problems with effluent dominated streams, like stormwater ditches, and multiple contributors with overlapping mixing zones. Determining responsibility and correcting noncompliance in these situations would be extremely difficult at best.

S8.A.3. Administrative orders approving bypasses are not considered enforcement actions because they are not associated with violations. This being the case they will not be issued by enforcement staff, and will not be tracked in the Agency Enforcement Database.

S9.A.2. Failure to submit a SWPPP after an Ecology request will be considered a Category 3 violation and a low priority for an enforcement action unless it can be determined that the facility also has Category 1, or 2 violations that are a result of the failure to submit a SWPPP. Experience has shown that enforcement actions to submit SWPPPs are very time consuming and have a low rate of success.

S9.A.3. This seems to indicate that all facilities covered by the permit must submit a SWPPP, this is not clear in the permit. This is going to be a significant burden on regional filing staff and file storage capacity in the regions.

S9.A.4.a. The notice for an inadequate SWPPP should be in the form of a letter, or inspection report, which is issued by inspectors, it should not be a formal enforcement action that can be appealed. Inspectors/Permit Managers should be responsible for working with permittees to address inadequate SWPPPs without going through a formal enforcement process. Experience has shown that requiring SWPPP revisions through formal enforcement actions is very time consuming and has a low success rate.

S9.B.2. The monitoring plan requirement will be a lot to expect from low tech businesses, Ecology should be prepared to provide extensive technical assistance, on site, to small businesses that need to develop monitoring plans.

S9.B.5. Include a statement that Ecology may require source control, or treatment BMPs beyond those identified in the Stormwater Manual if they are determined necessary for individual facilities.

General Comments

Determining compliance with this permit and correcting noncompliance through enforcement activity will be a major workload increase for existing staff. I am currently unable to devote the enforcement attention necessary to successfully ensure compliance with the existing permit. This is a great source of frustration for our regional Stormwater Permit Manager and myself. Many violations are not responded to because they are lower priority than other more serious problems that need to be responded to first. Due to an ever increasing workload many violations simply "fall off the plate" and are never responded to. The performance measure that has been adopted for enforcement focuses only on facilities with 5 or more DMR violations and does not include the substantial workload and complexities of the facilities covered by this permit. On junkyard can consume a significant percentage of the workload for an inspector and enforcement specialist, other programs that could provide help (MTCA, HWTR, TCP) do not. The Program must consider additional resources if it intends to successfully implement this permit. Additional inspectors should be assigned to the permit and they should be responsible for certain enforcement activities related to Category 1 and 2 violations. All Category 3 violations should be handled by a central stormwater enforcement officer working for the program on a statewide level. The regions do not have the staff to respond to the numerous Category 3 violations possible under this permit. WPLCS responsibilities and warning letters for DMR violations should also be taken care of by data entry and enforcement staff working for the program on a statewide level.

Mark A. Kaufman

My name is Mark A. "Mak" Kaufman and I serve as a water quality inspector for the Washington State Dept. of Ecology and the majority of my duties are to regulate industries that have discharges associated with stormwater in the Whatcom County, Washington area.

I have comments on the following sections of the proposed permit:

Section S-3 E (the language of the mixing zone requirements)

Section S-7 C (Design Storm exemption from permit violations)

S-3 E Mixing Zones.

- **Standard Mixing Zones Are Not Appropriate Without Thorough Ecology Review**

Washington State's Water Quality Standards for Surface waters of the State of Washington (173.201A.100 (1) authorizes mixing zones for discharge permits, general permits and orders as appropriate.

The authorization of a mixing zone for large industrial facilities that have extensively engineered waste-water treatment systems designed to effectively institute primary, secondary and sometime tertiary treatment of their effluent waste-streams is appropriate, since all of the treatment processes and associated equipment are verified to be in place and the concentrations of contaminates associated of process wastewater are known at very discrete levels. Stormwater discharges do not meet the above design and treatment criteria.

There are two distinct differences between stormwater and process wastewater. First, stormwater discharges **NEVER** receive the level of treatment associated with process waste streams, and secondly, the level of engineering required for process waste streams assumes:

1) very exacting and known concentrations of the given effluent loads based on the type of process being conducted and the volume of the discharge,

2) as well as the receiving water flow rates.

The concentrations of contaminates associated with stormwater discharges vary considerably based on the varying amounts of rainfall and the variability of the facility's activities in areas that collect rainfall. When these concentrations vary so much, there is no practical way of analyzing these concentrations and Ecology has no way of knowing whether or not allowing the mixing zone is appropriate.

It is these two distinct differences between these two discharge types and how they have been treated that warrants a thorough review of each stormwater facility's Best Management Practices (BMPs) on a case by case basis, before a mixing zone should be authorized.

The mixing zone language requires that all BMPs be in place and be properly maintained and operated. Ecology has no way of verifying that ALL BMPs are in place and in good working order without inspecting each facility. Authorizing a standard mixing zone before an inspection of the facility's treatment capabilities is NOT being protective of Waters of the State of Washington.

The mixing zone should only be authorized as a permit modification after Ecology inspects the facility and verifies that ALL BMPs are in place and working correctly, rather than being authorized automatically. The automatic authorization of a mixing zone without review is NOT protective of surface waters of the State of Washington and should only be authorized as a permit modification after thorough review of an ongoing operation.

I suggest the following change:

A mixing zone may only be requested as a modification of existing permit coverage. Approval for the modification of coverage would then be based on an evaluation of the implementation, maintenance and proper operations of existing Best Management Practices (BMPs).

2) Size of Mixing Zones is Not Appropriate.

The size of the mixing zone should be minimized to 50 feet in order to be as protective of waters of the State of Washington as possible.

- **Section S-7 C: Compliance with Standards: The Design Storm**

Enforcement decisions are made on a case by case basis. Due to the extremely complicated factors often associated with enforcement actions based on discharges to surface waters during storm events, this appears to guarantee the facilities that certain rain events give them the right to pollute. Many winters in western Washington have three or four rain events every year that exceed the 6 month rain event. This is bad agency policy, and sends a message to light industry in Washington State that it is OK to pollute in certain situations. It would be better to remain silent on this rather than have a poor enforcement decision already made for Ecology.

Thank you for the opportunity to provide comments on the Washington State Department of Ecology's (Ecology) proposed Industrial Stormwater General Permit, as requested by Ecology through its public notice process.

Northwest Mining Association

The Northwest Mining Association (NWMA) is a 107 year old non-profit, non-partisan trade association based in Spokane, Washington with a membership base of 2,000. NWMA's purpose is to support and advance the mineral resource and related industries. We do this by both representing and informing our members on technical, legislative and regulatory issues, and by disseminating educational materials related to mining. NWMA is committed to fostering sustainable economic opportunities and promoting environmentally responsible mining.

NWMA members reside in 42 states and are actively involved in exploration and mining operations in the West. Our diverse membership represents every facet of the mining industry including geology, exploration, mining, engineering, equipment manufacturing, technical services, and sales of equipment and supplies. NWMA also serves as the state mining association for Washington State.

NWMA appreciates the opportunity to comment on the proposed stormwater permit. The proposed revisions are substantial and require serious consideration of public comments received. It is not clear how this can be accomplished in the timeline established by Ecology. NWMA's comments address both the fact sheet and draft permit and inherently include the interactions between the two.

Fact Sheet

Page 1, last paragraph – it is stated, "The fact sheet will not be revised." It is not clear what this statement intends. If the fact sheet is incorrect, it should be modified by public comment. Does Ecology consider the fact sheet to be an absolute or do laws/regulations not allow for fact sheet changes?

Page 22, "CRITICAL CONDITIONS" – it should be clarified in the fact sheet that EPA criteria, the basis for Washington's criteria, were not developed to address episodic storm events. EPA guidance on criteria derivation directs that the criteria be utilized in the manner in which they were developed and the criteria were not developed for this purpose and therefore should only be used as guidance. In fact, EPA has no scientific basis for the duration or return frequencies for the criteria. During the course of the National Toxics Rule (NTR) litigation (United States District Court for the District of Columbia – Consolidated Case No. 93-0694 RMU) EPA admitted that there was no scientific justification for either duration or frequency intervals for their "Gold Book" water quality criteria guidelines. EPA was directed to develop the science necessary for valid duration and frequency intervals. We are not aware that EPA has ever complied with the Court's mandate. Until valid science is developed for duration and frequency intervals, with such science subsequently being subject to valid APA procedures, stormwater provisions should treat criteria as guidance.

Page 23, second full paragraph – a mixing zone is not allowed for discharges of pollutants causing a 303(d)(1) listing. What is the specific legal justification for this? Is this based upon state law or federal law? We are not aware of any provision in the federal water pollution control act disallowing a mixing zone for point sources and this was not the congressional intent.

Page 29, second full paragraph – the last sentence of this paragraph states, "Failure to sample during a quarter where appropriate rainfall events occurred is a permit violation." This is not mentioned in the draft permit. The fact sheet seems to presume an "appropriate storm event" will result in a discharge to surface water at all permitted locations. At certain sites, the ground may be highly permeable and an identifiable discharge point may not be identified. The natural surface water drainage at a site may also be intermittent and dry for most of the year. A significant storm event may be required to produce sufficient volume to produce a discharge.

Page 30, first full paragraph – suspension of monitoring for "a 303(d) listed parameter" is only available upon failure to "detect the presence of the listed parameter." This is not reasonable. If a stormwater discharge is below applicable criteria, then the discharge is neither causing nor contributing to an exceedence of the criteria. Provisions should also be made for situations where instream criteria are only exceeded during critical low flow, rather than runoff, situations. Similar consideration should be given where a stormwater discharge adds hardness to receiving water where hardness dependent metal criteria are the listed parameter.

Page 31, "Turbidity" section – we are not aware of any correlation between turbidity and suspended solids, and if there were, it would be entirely site-specific. Even though state regulations include a turbidity standard, this standard is dependent upon the turbidity of the receiving water. During spring

runoff, a good portion of measured turbidity may be the resuspension of material already contained with the beds and banks of the water body and a stormwater discharge may actually be diluting the turbidity of the receiving water. Provisions should be made for such situations and the criteria should be applied per the regulations.

Draft Stormwater Permit

Page 10 of 58, item C. – this section must clearly address what is required of existing permittees pursuant to the updating of the SWPPP. There are numerous changes to both the language and requirements for the SWPPP but it is not at all clear as to what Ecology expects of existing permittees. Ecology must clearly identify what additions must be made to the SWPPP of existing permittees and in what timeframe. Certain language changes in the draft SWPPP requirements may not intend changes from the 2000 permit but others may be the results of deficiencies identified by Ecology. Where the 2000 permit SWPPP requirements were determined deficient, Ecology should explain and justify the changes in the fact sheet.

Page 16 of 58, item D. – this section should specify the 303(d)(1) list since Section 303(d) includes two lists for TMDL purposes, with 303(d)(3) TMDLs being for informational purposes only.

Page 19 of 58, section S4 – this section requires that all facilities must monitor. Consideration must be given to situations where a facility is both inactive and unstaffed. The federal stormwater general permit provides such monitoring waivers for inactive mine sites while reserving discretion to require monitoring where site-specific conditions warrant. Ecology could do the same.

An additional sampling waiver for unsafe conditions, as also allowed in the federal general permit, should also be provided. There may be numerous sites where only large storm events, with resultant dangerous conditions, produce a discharge sampling opportunity.

Page 20 of 58, items 1. (sample within first hour) and 5. (samples must be representative of the discharge) – these conditions may be mutually exclusive in many situations. For example, at a site with impermeable ground in an area where rains may be frequent, a discharge sampled within the first hour may continue for days, thus the sample is not representative of the entire discharge – being representative of only worst-case "first flush" conditions. This "first hour" sampling requirement is also at odds with permit condition S4.E. where "samples and measurements taken to meet the requirements of this permit shall be representative of the volume and nature of the monitored parameters." These inconsistencies must be addressed.

Page 21 of 58, table at item 2. – the parameters of both turbidity and pH should be qualified per the instream conditions. For example, if the instream pH is 5.5 and the discharge is above 5.5 but below 6.0 for eight consecutive quarters, the sampling can be discontinued. Similarly, if the turbidity is above 25 NTU but less than the regulations specify for eight consecutive quarters, then sampling can be discontinued.

Page 25 of 58, item D. – as commented on in the fact sheet section above, the mere detectable presence of a 303(d)(1) parameter in a discharge does not provide a reasonable basis for not allowing discontinuing of the monitoring. Nowhere in Section 303(d)(1) did congress, expressly or by inference, require that water quality standards be met in 100% discharge water. If state law clearly directs such action, such legal reference must be included in the fact sheet.

Page 32 of 58, condition S9.A. – "General Condition G20" is referenced but the correct reference should be "G18."

Page 32 of 58, condition S9.A.4. – the issue of "modifications" is addressed. The permit should clearly define what constitutes a "modification." A modification, triggering the permit requirements specific to modifications, should be limited to either facility changes that would increase stormwater pollution

potential or where BMPs have been demonstrated to be inadequate. "Updates" to the SWPPP, as opposed to "modifications," should not be confused. Updates should include the new requirements for SWPPPs, changes in personnel, or upgrading existing BMPs. Given the permit triggers for "modifications," Ecology should be concerned that the regulated community might not commit to simple upgrading or enhancing of BMPs, as budgets allow (if these BMP changes are not necessary for compliance purposes) due solely to the triggering of permit "modification" concerns.

Page 34 of 58, item B.b. Site Map – it would be helpful if Ecology would give some direction of what is meant by "areas of existing and potential soil erosion." We assume this means erosion reasonably likely to enter surface waters since the permit is for stormwater discharges, but the word "potential" can be expansive. Given a storm of sufficient intensity, most of any site could have erosion "potential" but we are sure Ecology does not want the entire site map shown as "potential" erosion. A definition of the phrase "areas of existing and potential soil erosion" would be helpful.

Page 35 of 58, item d. Material List – there appears to be a major change over the 2000 permit requirements at this section. The 2000 permit inventory was realistically focused on materials that may be a reasonable source of stormwater pollutants "in significant amounts." The draft permit unreasonably expands the list to the mere potential presence of a pollutant in stormwater. The definition of "significant amount," in both the 2000 permit and the draft permit, is a reasonably thought out term and should remain in the language of the new permit. It appears the absence of this phrase in the draft permit is due to an uninformed and unwarranted concern for the term "significant."

The spills and leaks list in this section should also have a timeframe such as that provided in the federal stormwater permit (i.e. over the past three years).

Page 37 of 58, item 4. – here the draft permit seems to unreasonably expand on the requirements of the 2000 permit. The 2000 permit addressed areas of "high potential for significant soil erosion" whereas the draft permit appears to address any potential erosion. Again, we interpret the concept of erosion as being limited to where the erosion is reasonably likely to enter stormwater discharges.

Page 42 of 58, condition G17. penalties – it would be appropriate to include the legal citation allowing specific penalties for permit violations. This section does not appear to be consistent with the state regulations enforcement provisions for NPDES permits.

Northwest Pulp and Paper Association

This letter constitutes the comments of the Northwest Pulp and Paper Association (NWPPA) on the draft document titled The Industrial Stormwater General Permit – "A National Pollutant Discharge Elimination System and State Waste Discharge General Permit for Stormwater Discharges Associated with Industrial Activities," (March 2002).

NWPPA supports and incorporates by reference the comments of the Association of Washington Business and those of NWPPA members such as Weyerhaeuser. Many of these other comments are quite detailed in addressing the many complex aspects of the draft Industrial Stormwater General Permit; hence NWPPA comments will address only a few key policy issues: (A) Condition S3D Stormwater Discharges to Impaired Water and (B) Condition S3E Mixing Zone Descriptions.

By way of general comment, NWPPA believes the following principles should guide these two sections:

- The draft industrial stormwater permit should be consistent with state and federal laws and regulations and, where appropriate, "**available**" guidance. Available guidance would be adopted policies that can be readily accessed by concerned individuals.
- Where regulatory provisions are referenced, the draft permit should utilize the exact language of the applicable state **regulation** instead of paraphrasing, in order to avoid future problems of confusion and discrepancies of interpretation.

- The draft industrial stormwater permit should be prepared in recognition that the TMDL program will be the best vehicle **for** setting limits or allocations for discharges of pollutants for which a water may be listed as impaired or not meeting water quality standards.

Condition S3D – Stormwater Discharges to Impaired Water

Comment 1: (S3D1) NWPPA acknowledges that the draft permit makes a special accommodation for temperature discharges. Except for temperature, permittees must comply with the State's water quality standards for each pollutant named as a pollutant causing a violation of water quality standards at the location named on the 303(d) list. This is helpful because temperature problems usually occur during low flows which correspond to reduced rainfall in the summer; whereas stormwater discharges typically peak in the winter months.

Comment 2 (S3d2) NWPPA disagrees with the following language:

> "Existing facilities that discharge to waters listed as impaired by the State under Section 303(d) of the Clean Water Act must comply with the State's water quality standards for the named pollutant(s) at the point of discharge."

This provision is neither legally nor technically necessary as a blanket requirement. If such an approach is needed, this should be determined on a case-by-case basis.

1. Not Technically Needed

In the only legal case to address this matter, the California Water Resources Board rejected the approach Ecology proposes and gave the following reasons:

> "… a 303(d) listing alone is not a sufficient basis on which to conclude that a water necessarily lacks assimilative capacity for an impairing pollutant. The listing is only suggestive; it is not determinative. Listing decisions are made based on all existing water quality-related data and readily available information. That information may not reflect water quality throughout the entire water body. It may not reflect seasonal variations. In addition, more recent site-specific ambient data may be available since the original listings." (WRCP Order WQ 2001-06)

NWPPA recommends that Ecology re-write this section in order to allow the facility subject to the general permit the opportunity to have this issue considered on a case-by-case basis and offer information with respect to the status of the receiving waterbody and assimilative capacity. For example, the waterbody may be on the state 303(d) list, but the data to support that listing may not meet the data quality objectives of Ecology's Policy for listing of impaired waters (WQP 1-11). Or, more recent data may have become available.

2. No Existing Legal Requirement for Compliance at Point of Discharge

There is no current federal or state statute, regulation, or adopted guidances that requires compliance at the point of discharge (end-of-pipe) for discharges to impaired waters. There has been "talk" of a federal regulation or guidance, but none has been promulgated. Hence there are no laws, regulations or "available" guidance that requires compliance at the point of discharge instead of at the edge of the mixing zone or after allowance for initial dilution.

This is logical when the structure of the federal Clean Water Act is viewed as a whole.

At the time of the 1972 Amendments to the federal Clean Water Act, there would have been receiving waters that did not meet water quality standards, just as is the case today. During the hearings on the 1972 Amendments, mixing zones were discussed. Should Congress have desired to foreclose the use of mixing zones, it could have done so (in 1972 or since then). Instead, Congress provided for a comprehensive regulatory regime that addresses impaired waters through the TMDL process.

A host of EPA regulations and guidances allow for mixing zones, specifically 40 C.F.R. 122.44(d)(1) (also see attachment for further analysis). Of key interest is that EPA expressly declined to eliminate mixing zones when this section of the federal rules was last amended.

The practical necessity of mixing zones and state discretion to adopt mixing zone rules, such as are currently on the books in Washington, was upheld in the recent Tenth Circuit case of American Wildlands, et. al. V. EPA (August 2001) A number of cases have recognized the practical necessity of mixing zones, including P.R. Sun Oil Co. v. EPA (1993) and Marathon Oil Co. v. EPA (1987).

NWPPA recommends that Ecology consider the TMDL process as the primary mechanism for bringing a water body into compliance with water quality standards. It is well established that the TMDL process must account for both point source discharges and non-point discharges such as stormwater. To impose a requirement for compliance at the point of discharge in effect circumvents the allocation that might otherwise be established through the TMDL process.

Condition S3E – Mixing Zone Descriptions

NWPPA comments on the question of availability of mixing zones are addressed above. NWPPA comments on S3E raise the concern that this section is drafted such that it will produce questions of interpretation that could be avoided. Generally, it would be better to re-state existing regulatory language instead of paraphrasing.

Examples: The draft permit states that:

1. A mixing zone is only applicable when:

    a. The pollutant is not subject to 303(d) listing at the point of discharge.

    Comment: See above

    b. The receiving waterbody does not have a control plan that would limit available dilution.

    Comment: In some contexts, this wording would make no sense. There could be a TMDL which "limits available dilution" but still allows some increment of dilution hence a mixing zone. This is a matter which could be addressed through clear drafting.

    d. The mixing zone does not have a reasonable potential to result in a loss of sensitive or important habitat, substantially interfere with the existing or characteristic uses of the waterbody, result in damage to the ecosystem, or adversely affect public health as determined by Ecology.

    e. The mixing zone does not create a barrier to the migration or translocation of indigenous organisms to a degree that has the potential to cause damage to the ecosystem.

    Comment: While (d) seems a close approximation of a portion of WAC 173-201A-100, (e) is new language that is not in the regulation at all at this point.

NWPPA does not contest that Ecology should address potential to create a barrier to migrating fish. However as a drafting matter, Ecology should adhere to the regulatory language more closely. In this case, Ecology's legitimate concerns are probably covered by (d). If there are individual issues, Ecology has authority to address theses on a case-by-case basis.

Attachment 1
Comments of TMDL Coalition on Ban on Mixing Zones for Listed Pollutants

EPA should clearly provide that States may allow mixing zones in listed waters, and may consider mixing factors in permitting analyses, as long as the State's water quality management program will result in progress toward attainment of water quality standards.

The proposed TMDL rules do not explicitly address permitting issues for existing sources before a TMDL is developed. In particular, the Agency has not stated whether mixing zones would be allowed for these sources. However, in another recent Federal Register notice, concerning the reproposal of a ban on mixing zones for bioaccumulative chemicals of concern in the Great Lakes Basin (63 Fed. Reg. 53632, October 4, 1999), EPA states that mixing zones cannot be granted for discharges of listed pollutants to impaired waters. Also, we are aware that at least one EPA Region has taken the same position, objecting to a State-issued permit because it allowed mixing zones and considered mixing factors in a "reasonable potential" permitting analysis. We believe that those Agency positions are incorrect; they are contrary to Congressional intent, and they are not authorized by current Federal regulations or policies. Moreover, they would impose substantial additional control costs without resulting in significant environmental benefit. Therefore, we believe that EPA should retract its statements on this issue and clearly provide that States may allow mixing zones in impaired waters, and may consider mixing factors in "reasonable potential" analyses, as long as the State can demonstrate that its overall approach to managing water quality in the waterbody will result in progress toward attainment of water quality standards.

I. Congress Did Not Intend to Eliminate Mixing Zones for Listed Pollutants.

The CWA does not contain, expressly or impliedly, a Congressional intent to eliminate mixing zones for listed pollutants. In its recent statements on this issue, EPA has relied on Section 301(b)(1)(C)2 of the Act as statutory authority to conclude that mixing zones must be eliminated for impaired waters. However, a review of that section's legislative history provides no indication that Congress meant to give EPA the authority to eliminate mixing zones.

It is important to remember that in passing the Act in 1972, Congress did not intend to make water quality standards, and use of those standards to control effluents, into a major driving force in improving water quality. Indeed, the Act signified a move away from that type of regulatory approach:

> The legislation recommended by the Committee proposes a major change in the enforcement mechanism of the Federal water pollution control program from water quality standards to effluent limits....Under the 1965 Act, water quality standards were to be set as the control mechanism....The water quality standards program is limited in its success....Under this Act the basis of pollution prevention and elimination will be the application of effluent limitations. Water quality will be a measure of program effectiveness and performance, not a means of elimination and enforcement.

S. Rep. No. 92-414, p. 3710, 92nd Cong., 2nd Sess. (1972) (emphasis added).

While § 301(b)(1)(C) was included in the statute, Congress envisioned this provision playing a carefully limited role: "Where the Administrator can identify a direct link between a discharge source and water quality, the Administrator is authorized to tighten controls on the polluter." Id. at 3676. In explaining

[2]EPA's statements have expressly cited a regulatory provision, 40 C.F.R. § 122.44(d)(1). However, EPA relied on Section 301(b)(1)(C) to promulgate that rule. *See*, *e.g.,* 54 Fed. Reg. 23868, 23873 (June 2, 1989).

the function of this provision, Congress gave absolutely no indication that it meant to do away with the long-recognized practice of applying mixing zones:

> "Section 301(b)(1)(C) provides adequate authority to apply new information to existing water quality requirements and upgrade effluent limits accordingly....In other words, whenever the Administrator determines that application of the best practicable treatment technology requirements of Phase I will not provide for implementation of existing water quality standards for interstate or intrastate streams, he must tighten the requirements against a source of discharge or group of sources."

Id. at 3710. This generally phrased directive to "upgrade effluent limits accordingly" and to "tighten the requirements" is a far cry from a mandate to apply water quality standards at the end-of-pipe as effluent limits, which is the result of EPA's new "no mixing zone" policy. The legislative history simply provides no support for such a requirement.

II. EPA's Rules Do Not Authorize the Unilateral Elimination of Mixing Zones for Listed Pollutants.

A. States are Not Required to Disregard Mixing Zones in Calculating Effluent Limits.

EPA has taken the position that 40 C.F.R. §122.44(d)(1) requires elimination of mixing zones in calculating effluent limits for listed pollutants. That simply is not so. EPA's permitting rules simply provide that States may adopt mixing zone policies to implement their water quality standards and, as discussed in Section IV below, grant States broad discretion to establish permitting programs. The regulations do not restrict or prohibit the use of mixing zones for listed pollutants, and 40 C.F.R. § 122.44(d)(1) itself only requires that NPDES permits include conditions "necessary to . . . achieve water quality standards." In fact, regulations specifically addressing whether to include an effluent limit – including 40 C.F.R. § 122.44(d)(1) -- expressly contemplate mixing zones:

> "[w]hen determining whether a discharge causes, has the reasonable potential to cause or contributes to [an exceedance of water quality standards] . . . the permitting authority shall use procedures which account for existing controls on point and nonpoint sources of pollution, the variability of the pollutant or pollutant parameter in the effluent . . . and where appropriate, the dilution of the effluent in the receiving water."

40 C.F.R. § 122.44(d)(1)(ii) (emphasis added). In promulgating this regulation, EPA recognized the existing practice of using mixing zones:

> "To determine whether a discharge causes, has the reasonable potential to cause, or contributes to an excursion above a water quality criterion, and thus requires a water quality-based effluent limit, the permitting authority must use reliable and consistent procedures. Although the procedures vary considerably from one state to another, most such procedures account for any dilution of the effluent in the receiving water, after considering mixing zones if applicable, any contributions of the pollutant from upstream and nonpoint sources, the variability of the pollutant in the effluent, and, when evaluating whole effluent toxicity, the sensitivity of the test species in a toxicity test."

54 Fed. Reg. 23868, 23872 (June 2, 1989) (emphasis added).

Moreover, EPA previously has refused to prohibit states from applying mixing zones as a means of achieving water quality standards. When it issued Section 122.44(d)(1) - the rule at issue in this permit proceeding - EPA received comments requesting that mixing zones be prohibited. EPA rejected those comments, stating as follows:

> "EPA believes, however, that it is inappropriate to prohibit mixing zones in this regulation. The use of mixing zones raises issues that are more appropriately addressed in the state water quality standards adoption process. Therefore, EPA is not deleting the reference to mixing zones in paragraph (d)(1)(ii)."

54 Fed. Reg. 23868, 23872 (June 2, 1989)(emphasis added). EPA cannot now do, by fiat in the preamble of a Federal Register notice or in comments on a State permit, what it has previously refused to do in its rules: prohibit mixing zones.

B. States are Not Required to Disallow Mixing Zones in Calculating Reasonable Potential.

In addition to claiming that mixing zones are not allowed for listed pollutants, EPA has also asserted that mixing factors cannot be considered in developing a "reasonable potential" analysis. As quoted above, 40 C.F.R. § 122.44(d)(1)(ii) squarely contradicts this assertion and, where appropriate, expressly allows for dilution of the effluent in the receiving water. Moreover, EPA specifically considered whether to allow mixing zones to calculate reasonable potential for impaired waters and concluded that the use of mixing zones should continue:

> "EPA intended the proposed rules to apply to any point source that is discharging a pollutant at a level that is exceeding or may exceed a waste load allocation for that discharge . . . The process for identifying water-quality limited segments requiring total maximum daily loads (TMDLs) and wasteload allocations (WLAs) is set forth in EPA's regulations at 40 C.F.R. § 130.7. . . . This clarification makes no substantive change to today's regulations, but merely clarifies that today's amendments to [40 C.F.R. § 122.44(d)(1), including procedures to account for dilution in receiving waters] are consistent with EPA's existing approach for establishing water quality-based effluent limits."

54 Fed. Reg.23868, 23873 (June 2, 1989)(emphasis added). As discussed immediately below, EPA's "existing approach" is found in the Technical Support Document for Water Quality-Based Toxics Control (1991) ("TSD"), and incorporates mixing factors directly into the wasteload allocation analysis.

III. Long-Standing EPA Policies Contradict Elimination of Mixing Zones for Listed Pollutants.

Guidance issued by EPA, which has been in place for almost 10 years, expressly provides for the incorporation of mixing zones in developing a wasteload allocation for point source dischargers. EPA's TSD provides:

> "The establishment of a TMDL for a particular water body is dependent on the location of point sources, available dilution, water quality standards, nonpoint source contributions, background concentrations, and instream pollutant reactions and effluent toxicity. All of these factors can affect the allowable mass of the pollutant in the water body."

TSD at p. 67 (emphasis added). The establishment of a TMDL presupposes that the waterbody has been listed for a particular parameter. Consequently, EPA's policy existing in 1991 clearly allowed for states to consider mixing zones in calculating wasteload allocations for impaired waterbodies.

Further, the TSD recognizes that a state regulatory agency may decide to deny a mixing zone in a site-specific case. EPA identifies several examples where denial of a mixing zone may be appropriate in a particular instance. However, the elimination of mixing zones for listed pollutants is conspicuously absent from these examples. Id. at p. 71.

IV. A Ban on Mixing Zones for Listed Pollutants Would Conflict with Federal Clean Water Act Policies.

A. A Federally-Imposed Mixing Zone Ban Would be Inconsistent with the States' Broad Discretion to Implement Water Quality Standards.

As addressed briefly above, EPA's attempt to impose a ban on mixing zones for listed pollutants is inconsistent with the States' broad discretion to implement water quality standards. Section 101 of the Act provides:

> "It is the policy of the Congress to recognize, preserve, and protect the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution, to plan the development and use (including restoration, preservation, and enhancement) of land and water resources, and to consult with the Administrator in the exercise of his authority under this chapter."

33 U.S.C. § 1251. Consistent with this directive, EPA's own rules grant the States authority to adopt mixing zone policies to implement water quality standards but never restrict or otherwise prohibit mixing zones for impaired waterbodies. In fact, the EPA Administrator has specifically recognized that States have broad discretion in this area:

> "[W]hether limited forms of relief such as variances, mixing zones, and compliance schedules should be granted are purely matters of state law, which EPA has no authority to override."

In the Matter of Star-Kist Caribe, Inc., NPDES Appeal No. 88-5 (1990) at 15-6. EPA's own regulations confirm this position: when EPA establishes Federal water quality standards for a State, its rules specifically provide that "[f]or all waters with mixing zone regulations or implementation procedures, the criteria apply at the appropriate locations within or at the boundary of the mixing zones . . . ." 40 C.F.R. § 131.36(c)(2)(I).

Historically, NPDES permitting practices have considered the physical mixing of effluents with ambient receiving streams. By including mixing zones in permitting decisions, State agencies have recognized the fact that an effluent discharge may increase pollutant levels in the immediate vicinity of an outfall without having any significant impact on pollutant levels in the waterbody as a whole or on achieving a waterbody's designated use(s). Flexible mixing zone policies have allowed State agencies broad discretion in issuing permit limits and, where limits have been required, in calculating the appropriate numeric limit. Accordingly, public and private resources have been focused on situations where additional control requirements will, in fact, improve water quality.

EPA's mandatory removal of mixing zones would prohibit States from deciding the most practical and environmentally sound results. More permit limits would be issued than under current practices, and the limits would require dischargers to meet water quality criteria at the end of the pipe. Compliance with water quality standards at the outfall would result in enormous additional compliance costs for redundant or unnecessary treatment systems. In turn, this will likely result in lost jobs, increased sewer charges and taxes, and stunting of economic growth. At the same time, the environmental benefits – i.e., improved water quality – would be minimal.

B. A Federally-Imposed Mixing Zone Ban Would be Inconsistent with EPA's own CWA Policies.

In implementing the CWA's principles, EPA has adopted a number of policies that recognize practical constraints on attainment of water quality standards, and which provide States with tools that they can use to achieve those standards in an efficient and economically reasonable manner. Two such policies are those that deal with compliance schedules and "phased" TMDLs. EPA's asserted ban on mixing zones for listed pollutants is fundamentally inconsistent with the reasonable, practical concepts that are embodied in those other EPA policies. Those conflicts are explained further below.

1. Compliance Schedule Policies

EPA's existing policies on the issuance of compliance schedules illustrate the flexibility that the States have under the CWA in establishing requirements to attain water quality standards. EPA does not require that dischargers must meet water quality standards immediately upon issuance of an NPDES permit. Rather, States may issue compliance schedules, which allow dischargers to meet interim targets over a period of years while continuing to make progress toward final compliance. EPA does not

specify or require a maximum Federally-allowed compliance schedule. Even for the Great Lakes Initiative rulemaking, where EPA did specify a maximum compliance term (five years), EPA specifically rejected commenters' suggestion to demand immediate compliance. See Water Quality Guidance for the Great Lakes System - Supplementary Information Document ("SID"), at 434. Therefore, regarding compliance schedules, EPA has not mandated a strict policy that would deny States' discretion to determine when dischargers must meet applicable effluent limits. Instead, EPA has recognized that practical factors must be considered, including the time and resources needed to identify, design and implement complex wastewater treatment systems. EPA cannot deny States the same discretion and flexibility in establishing mixing zone policies for listed waters.

2. Phased TMDL Policies

The "phased TMDL" concept is another example of the flexibility that is authorized, and which EPA has allowed, under the Act. The "phased TMDL" has particular relevance to EPA's asserted ban on mixing zones in listed waters, since the TMDL program applies specifically to listed waters. As discussed in our comments on "Phased TMDLs," the "phased TMDL" concept is specifically intended to address complex water quality problems, such as those involving contaminated sediments, where it may not be feasible to reach compliance with water quality standards easily or quickly. In many of these cases, there are existing point sources that are minor contributors of loadings, while the primary sources will need to be addressed on a long-term basis. Without flexibility for the State to consider long-term reductions in making near-term permitting decisions, existing dischargers could receive very stringent limits even though future reductions from other sources, of far greater impact, would be sufficient to bring the waterbody into compliance. EPA has recognized that severely restricting NPDES permittees in this manner would be unfair and likely unnecessary. Thus, EPA developed the "phased TMDL" as part of its guidance implementing the Great Lakes Initiative.

The Great Lakes SID explains the concept behind "phased TMDLs": "TMDLs developed using the phased approach are based on the reasonable expectation that water quality standards will be met in a reasonable period of time and that specific controls may be implemented in stages." SID at p. 257. Thus, States do not have to require a particular facility to achieve immediate compliance with water quality standards. Rather, States can estimate the loadings for that NPDES source that will, along with reductions from other sources, bring about compliance within a "reasonable period of time." States have substantial discretion in implementing the "reasonable period of time" test:

> What constitutes a reasonable period of time will vary depending upon the situation. Therefore, EPA will not specify any particular period, such as eight years. The time period associated with these stages of implementation will ultimately determine when water quality standards will be met for a particular waterbody.

SID at p. 257.

The flexibility and discretion granted to States through EPA's own "phased TMDL" concept directly contradicts the Agency's recent statements requiring elimination of mixing zones for listed pollutants. EPA contends that States lack discretion to consider a mixing zone in establishing effluent limits. Under that approach, States must issue each source onerous effluent limits equal to the water quality criteria and applied at the outfall. States could not consider any other factors – including the lack of impacts on the waterbody as a whole or on the waterbody's designated uses, or the existence of expected reductions from other sources that will help the waterbody reach attainment. This strict, inflexible mandate clearly contradicts EPA's flexible "phased TMDL" approach, which also applies to listed waterbodies but which allows States flexibility and discretion to apply control requirements in stages over a "reasonable period" of time."

The "phased TMDL" approach, like the established EPA policies discussed above relating to compliance schedules and mixing zones, is statutorily authorized, reasonable and appropriate. EPA's

asserted ban on mixing zones for listed pollutants, on the other hand, is inconsistent with the statute and with EPA's own rules and policies, and will impose enormous costs for little environmental benefit. That position should be withdrawn by EPA, and the Agency should clearly state that States may allow mixing zones in listed waters, and may allow mixing factors to be considered in "reasonable potential" permitting analyses for those waters, as long as the State shows that its overall water quality management approach will result in progress toward attainment of its water quality standards.

Olympia Precast, Inc.

In a quick review of the Draft Industrial Permit, I see a number of issues that would be expensive and or impossible to comply with. My company has a Waste Discharge Permit, just renewed last year, so I just became aware that this could affect us. Olympian Precast is a small architectual precast concrete manufacturer in Redmond, Washington. (Small equals less than 4000 cubic yards of concrete produced in one year).

These requirements certainly can't meet the intent of helping Washington Business be competitive.

Two things I noticed in particular: The stormwater sampling requirements are logistically difficult. In order to get samples within one hour of a storm event, a plant would have to staff 24/7 or invest in expensive automatic monitoring. Can't BMP's accomplish what needs to be done here?

Posting Storm Water Sampling Results on the internet goes far beyond the Freedom of Information Act public disclosure requirements. I do not see a necessity here. Information is available easily enough at State offices.

I need time to send this to my environmental consultants to analyze the potential effects of this further. Please keep working with business interests on this draft, so that Washington businesses can comply and survive.

PACCAR

The following combines comments from our three (3) permitted facilities in Washington State: Kenworth Trucks (KW) in Renton, PACCAR in Tukwila and PACCAR Technical Center in Mt Vernon. These comments reflect operation and logistic concerns at the three facilities.

Generally speaking, the new quarterly sampling and reporting requirements will be burdensome and costly for any manufacturing facility. We propose that those who demonstrate Best Management Practices and have installed stormwater pollution control systems should not be subject to the requirement of quarterly sampling and analysis. Such frequent sampling should only be required of manufacturing facilities that do not take these pro-active steps to prevent stormwater contamination. The existing permit already requires semi-annual inspections during the wet season between October 1 and April 30 and the other during the dry season of May 1 and September 30. We recommend semi-annual sampling during those inspections which should capture the dry and wet season effluent discharge quality. We further recommend reports only be required to be submitted to the agency when the discharge exceeds the discharge limit. Otherwise, the reports shall be kept on site and be available for review during any Ecology inspections.

The permit proposes that the permittee may suspend monitoring for a listed parameter if eight consecutive analyses fail to detect the presence of the parameter. To reduce costs and still provide assurances of water quality, we suggest that after four consecutive analyses with no parameter exceedences of discharge standards, monitoring reports shall be kept on site and be available for review during any Ecology inspections.

In addition, the draft permit requires that the storm event for the quarter must be preceded by at least 24 hours of no rainfall and the sample taken within the first 30 minutes of the storm event. This timeframe

requirement for sampling is excessively costly because it is logistically difficult in the rainy Northwest. With our facilities, we have two extremes. One has stormwater discharge locations that are nearly always flowing especially during the winter months. The first 30 minutes of a storm would not be the first 30 minutes of discharge from the facility. Conversely, the gravity fed retention pond at another facility could be dry especially during the summer months making sampling impossible. With retention ponds stormwater run-off is accumulated and mixed in the pond during the course of the storm, and therefore, the sampling time is not critical in determining the quality of the off-site discharge. We propose that facilities should sample at any time during the storm event or clarification be made for continuous flow and retention ponds.

Section S3 references Impaired Waterbodies on State's 303(d) list. According to this listing, Padilla Bay (a facility receiving waterbody) is listed for PCBs only. This is a not a Water Quality Standard supported by the Industrial Stormwater General Permit. The baseline requested stormwater sample analysis will not address soil sediment PCB levels. Lake Washington is on the 303(d) Impaired Waters list for fecal coliform only. The requested sample analysis for pH, turbidity, zinc, and oil and grease will not give results for fecal coliform. We therefore recommend that required monitoring be for relevant pollutants only in terms of the specific 303(d) listing criteria for receiving waterbodies and the potential contaminants of concern that are stored at a given facility.

Section S9 which addresses the SWPPP (Stormwater Pollution Prevention Plan) states that the facility assessment must be as complete as possible and must be updated to reflect changes at the facility. This is an ambiguous requirement and could be overly burdensome if non-substantive changes at the facility require SWPPP revisions. We recommend an annual review by a "competent person" and revisions of "substantive" descriptions and changes to the SWPPP as needed. We also suggest providing general descriptions of the types of products stored at the facility instead of complete inventories of each material stored onsite. For example, we recommend general descriptions of types of chemical products and ranges of quantities stored or transferred outside at the facility.

Under General Conditions G2, it states that "the permittee shall at all times properly operate and maintain facilities and systems of collection, treatment, and control…." For a variety of reasons, stormwater equipment may stop operating and/or require repair and maintenance. We recommend rephrasing this paragraph to "the permittee shall properly operate and maintain all facilities and systems in accordance with good industrial practices…." and that an allowance be made for emergency or reasonable repair and maintenance of equipment.

PACCAR Inc promotes Best Management Practices and wants to join the community in protecting our waterbodies.

Parametrix, Inc.

Thank you for this opportunity to offer comments on the proposed Industrial Stormwater General Permit. The March 2002 draft permit reflects a significant amount of work and thought, and strikes us as an improvement over the previous permit issued October 4, 2000. However, with any such effort to provide effective, consistent, and balanced environmental protection, there are areas where we feel that the permit can be revised and clarified.

Conditions Allowing Suspension of the Monitoring Requirement

The proposed permit requires that permit holders regularly monitor storm water discharged from their property/operations to compare with a series of benchmark values (Special Conditions S3 and S4). Facilities that consistently attain benchmark values (meaning less than or equal to these values) in their storm water over eight consecutive quarters are allowed to suspend monitoring (Special Condition S4). While we support the intent of these conditions, we strongly believe that the stated conditions for

achieving consistent achievement could be overly restrictive, and could result in unnecessary monitoring for facilities that can exceed the benchmark values but achieve water quality standards at the required point of compliance.

As stated in the permit, the benchmark values themselves do not constitute water quality standards, and are only considered indicative of whether the stormwater could cause a water quality violation. Examination of the derivation of benchmarks reveals that they are derived from a variety of sources (USEPA 2000), some of which have no relevancy to environmental harm. For example, the oil and grease benchmark was based in the median value detected in the National Urban Runoff Program (NURP), and is not based on any potential negative effect on aquatic life, nor does it consider the effects of mixing. In contrast, Washington State Surface Water Quality Standards (WQS) (as embodied in WAC 173-201A) are based on toxicity studies that identified concentrations protective of aquatic life.

While we do not contest the use these benchmarks to identify facilities that can suspend monitoring, we do believe that facilities that can demonstrate compliance with Surface Water Quality Standards at the edge of the assigned mixing zone for eight consecutive quarters should also be allowed to suspend monitoring. Adding this provision to Special Condition S4 will help this program achieve environmental quality will helping to reduce the economic impact of this program on the regulated facilities. We urge you to extend the permit language describing "consistent attainment" to include this definition.

Waters of the State

The current draft stormwater general permit makes several references to waters of the state (e.g., S1 A. first paragraph, S1 E first paragraph, and S3 A, first paragraph. While a definition for waters of the state has been provided in both the permit (See p. 55 and 56) and the fact sheet (see Appendix B p 6), we believe further clarification is necessary. This is particularly important for stormwater which is captured and conveyed in a multitude of different ways ranging from stormwater systems to puddles and drainage channels. Do waters of the state include any water in man-made or man-altered channels and ditches such as those constructed for drainage along side roads, or those designed specifically for agricultural drainage? Is drainage considered a beneficial use? Do waters of the state include ponds resulting from historical activities such as gravel excavation or peat mining? Do waters of the state apply to channels and ditches specifically constructed to convey stormwater to detention facilities? Is it implicit that these conveyance systems be closed pipes rather than open channels to ensure they not be considered waters of the state? Without a clear definition of what constitutes waters of the state, it is not clear where the point the discharge ends and the waters of the state begin (i.e., is the point of discharge at the end of a pipe or is it at the end of a conveyance channel discharging into waters of the state?).

Furthermore, the terms "waters of the state," "surface water," and "receiving water" seem to be used interchangeably. For example, under section S4 A. the first sentence reads ". . . all facilities must conduct quarterly monitoring of authorized discharges of stormwater to surface water." Are the surface waters referred to here considered waters of the state, receiving waters, or any surface water including those discussed above for the purposes of stormwater conveyance. The fact attempts to clarify with a description of receiving water (page 24). However, it is still not clear whether a distinction is being made between a receiving water and waters of the state (or are they the same thing) and whether supporting beneficial uses is what ultimately governs the definition of either.

Clarification of these terms would help avoid confusion in the design of sampling programs, and make the conditions and requirements for the permit holders more readily interpretable.

WET Testing

It is of concern to us that the permit implicitly discourages the use of whole effluent toxicity (WET) testing as an additional tool to evaluate compliance with water quality standards (see fact sheet page 26). It has been our experience that WET testing is an important component for determining compliance with the narrative criteria, particularly for stormwater where complex site-specific conditions reduce chemical bioavailability and hence toxicity. Furthermore, the results of WET tests can be instrumental in evaluating the merits of conducting a site-specific study to provide the "...case-by-case" information the permit refers to (i.e., what are the appropriate numeric water quality standards that apply). Rather, we would like to see some reference to WET testing in the permit itself, rather than have the discussion buried in the fact sheet.

On-Line Monitoring Data

During the May 13 Bellevue workshop, you indicated that the Permit holders' stormwater monitoring data would be made available to the public through the Department of Ecology website. While we support public accessibility to monitoring data, we believe that general posting of monitoring data on the internet is inadvisable. General posting of monitoring data could conceivably encourage legal action against small businesses that can ill-afford legal fees to defend or settle such action. Furthermore, it may require more response action (legal testimony and paperwork) on behalf of already-taxed Ecology staff. If monitoring data identifies dischargers who need to implement additional BMPs, this would be best handled by cooperative action between Ecology and the permit-holder, which is certainly more in keeping of the spirit in which the permit was written.

Thank you for this opportunity to provide these comments. Please feel free to contact either of us if there is any additional information or explanation we could provide you concerning these issues.

Reference

United States Environmental Protection Agency (USEPA). 2000. Final Reissuance of National Pollutant Discharge Elimination System (NPDES) Storm Water Muli-Sector General Permit for Industrial Activities; Notice. Federal Register, 65(210). pp. 64746-64794. October 30, 2000.

People for Puget Sound

While we appreciate improvements that have been made in the new draft of the Industrial Stormwater General Permit, particularly in the area of monitoring requirements, we do have a number of serious concerns with the permit. Given the serious water quality problems we face in this region and the strong relationship between stormwater runoff and the contamination of Puget Sound, we do not feel that we can wait another permit cycle to have these problems addressed. I hope you find the following suggestions constructive as you rework the draft.

To begin with, as noted above, there are a number of new provisions which we strongly support. You have included significant monitoring requirements which will begin to establish a real baseline of information from which to regulate under future permits. We believe this is an essential first step. We also appreciate inclusion of general language which requires compliance with water quality standards. Finally we appreciate the fact that you have defined "new facilities," which are then automatically required to comply with permit conditions, to include those which previously held permits but lost them due to enforcement actions or failure to pay fees.

While we appreciate these improvements, there are a number of areas in the draft permit which we feel are deficient. In particular, we are very troubled by the ability of applicants to, in a sense, self-regulate themselves without true oversight by the agency.

To begin with, while the permit generally identifies the need to comply with water quality standards, there are a number of provisions which would allow permittees to escape this requirement. We believe that a number of these violate either state or federal law.

The first of these exceptions, involves the ability of dischargers to qualify for a mixing zone by simply checking a box and signing and submitting a form (draft fact sheet: "Appendix E" mixing zone request). If the applicant submits such a form, there would then be no practical way to use the monitoring generated by the applicant to insure compliance with water quality standards. To make the situation worse, it would appear that, because existing facilities need not submit an application for modification of coverage to be eligible for a mixing zone, there would be no opportunity for the public to review or challenge many of these determinations. Finally, it would seem that, under the terms of the permit such applications are automatically approved within 38 days unless Ecology acts. Given the volume of requests and the limited staffing at the agency to respond, we are concerned that this approach will not allow for adequate review.

We are particularly disturbed with this approach since current law requires a demonstration that the applicant has fully applied AKART prior to the granting of any mixing zone. Our information suggests that in most cases BMPs are not correctly applied on site. Your own inspections indicate no more than 25% of the facilities are full compliance with such requirements. It is a serious mistake to assume AKART is being met at these facilities.

Moreover, Ecology must determine, again under current law, that the request for a mixing zone is accompanied by enough information that the agency could reasonably determine that there is no interference with beneficial uses or ecosystem damage. The form would not seem to provide you with enough information to make such a determination let alone the resource problems mentioned above.

We also object to the allowance of extended compliance timelines for facilities discharging into 303(d) listed waters. While we appreciate that you have required applicants to meet water quality standards at end-of-the-pipe, the extension of compliance timelines beyond 3 years violates the federal Clean Water Act. 33 USC 1342(p)(3)(A) and (4)(A) and 1311(a).

We also object to language which would allow permittees to escape water quality standards in the event of storm events which exceed design criteria for stormwater treatment systems.

Again, we feel this violates the federal Clean Water Act.

Another major concern is that, despite all the effort that the department underwent to develop the new Stormwater Manual for Western Washington, the new industrial stormwater permit does not require all facilities to meet these new standards. We urge you to require this of all the facilities covered by the permit.

The draft permit should also include a requirement that a current permit be kept on file at the Department, so that it is available for public review. Similarly, visual monitoring reports should be submitted to the Department and kept on file.

Finally, while we do not object to EPA's "no exposure" exemption to permit requirements, we do not believe that the procedure identified in the draft permit for such exemptions complies with federal law. Again, the department allows permittees to simply submit a form and if the Department does not respond, the exemption is automatically granted within 60 days. We believe that this does not qualify as a "no exposure" determination as required of the agency under federal law.

In summary, while we applaud the progress the department has made in developing this permit, we still believe that it is seriously flawed and in conflict with federal and state law. We are particularly disturbed by the components with allow permittees to make important determinations without independent verification by the state. While we recognize that your resources are limited, we feel that this approach is almost certain to fail.

Port of Seattle

Thank you for providing this opportunity to comment on the Revised Industrial Stormwater General Permit ("the Draft Permit"). The Port of Seattle has a compelling interest in the issuance of a Permit that is both protective of the environment and that is possible to comply with. Three Port of Seattle operations are currently covered under the existing Permit: the Maintenance operation, located in the Lower Duwamish industrial area; Terminal 37 on Elliott Bay; and the Marine Industrial Center on the Ship Canal. In addition, we have fourteen tenants who are covered under the existing Permit. The Port is co-permittee on most of these tenant permits. These permitted properties represent approximately 80-85% of the acreage for all the Port's Seaport properties. Thus, the language of this Draft Permit will have a significant effect on us.

This letter is organized in two sections: an introductory section with general comments, and a longer, more detailed section that goes through specific comments concerning the Draft Permit language itself.

General Comments

Although most of our specific comments are critical of the Draft Permit, we wanted at the outset to remark favorably on certain aspects of this permit that make a lot of sense to us.

We appreciate the Permit's continued affirmation of the important concept that all stormwater dischargers should utilize a common technical document (the Stormwater Management Manual) that takes an adaptive, BMP-based approach to stormwater management. Similarly, we welcome the Permit's continued emphasis on the importance of Stormwater Pollution Prevention Plans (SWPPPs) as the key management tool in implementing these BMPs. We believe these elements provide the only realistic path to address stormwater problems at industrial facilities.

We commend Ecology on your decision not to include temperature and fecal coliform as compliance requirements in the permit. There are just too many unresolved technical, regulatory, administrative and operational problems with managing these pollutants in stormwater to set either a benchmark or an effluent limit.

The agency's move towards adopting EPA's concept of benchmarks is, we believe, a positive step to break the monitoring logjam.

We were pleased to see the clear statement in S2A that although a property owner may chose to be a co-permittee, it is the operator of the industrial facility who is the permittee. This clarification will help us in working with our tenants.

The design storm exemption in S7(C) is an absolute necessity, given the dramatic variability in our weather patterns and the need to have achievable engineering standards in the Manual

Another general comment that concerns not the Draft Permit, but certain statements made in a section of the Fact sheet entitled "Permit Status and Summary of Compliance with the Previous Permit." (pages 15-16). The Fact sheet states that only about 25% of the facilities inspected would be considered in "full compliance" with permit BMP requirements. As an initial matter, the Port takes great pride in the amount of time; money and effort we put into making sure that our facilities and our tenants' facilities are in compliance with BMPs. However, we recognize that our commitment is not typical, and indeed can understand why many facilities have found compliance to be an extremely challenging task. The constantly shifting state and local regulatory requirements, the cost and space constraints that limit existing facilities' ability to upgrade to new engineering standards, and the general lack of understanding of stormwater requirements in the labor force are real problems that must be dealt with every day. There are parts of this Draft Permit that imply that Ecology thinks the way to achieve 100% compliance is to just mandate it, and set up dire consequences. However, lessons learned from other

Ecology programs (e.g. Hazardous Waste and Toxics Reduction) reveal that it is common to find very low levels of compliance when the agency tries to impose complex technical regulations and lots of paperwork on small enterprises. Most businesses are out of compliance due to ignorance, not to any desire to cause an environmental problem. As the HWTR program has successfully shown, creative and energetic technical assistance, doggedly implemented, will do more to achieve widespread compliance than will any "big stick." We hope that Ecology will re-examine whether it is putting sufficient emphasis on technical assistance. Loading on more and more complex technical requirements, as in this Draft Permit, will only lead to a continuing spiral of non-compliance.

Specific Comments

Our specific comments are organized in logical order, not necessarily in the order in which they appear in the permit.

S1 and S6: Permit Coverage and "No Exposure" Certificate

We think it is sound and practical policy to extend the "no exposure" exemption option to any facility that has no exposure. However, the difficulty lies in figuring out how to meet the required conditions. For example, how can a facility know whether there exists a "reasonable potential to cause or contribute to a violation of water quality standards," as required under S6(C)(3)? Similarly, how does one determine whether the water running off the roof is subject to "significant levels of pollutants" in S6(C)(4)? Aren't these two requirements essentially the same thing for a roofed facility? These conditions clearly call for some judgment by the permittee, but the Permit is silent on how to exercise that judgment. Presumably, a "no" answer to all the questions on the Exposure Checklist (Appendix G) is sufficient to demonstrate compliance with S6(C)(3) and (4), but it would be nice if the Draft Permit said so. Similarly, the Fact sheet at page 34 alludes to the fact that there are certain roof compositions that are assumed to pose a problem, and it would be nice if the Exposure Checklist simply listed these.

Another suggestion is to allow the "no exposure" exemption to apply to outfalls, not just to entire facilities. The Draft Permit's approach unreasonably discriminates against owners of facilities with large land areas. We fail to see the logic of why a no-exposure discharge shouldn't be granted no-exposure coverage – after all, isn't the point to exclude those sources that don't contribute to pollution problems, regardless of how the property happens to be configured?

S7: Compliance with Standards

We are greatly alarmed by the bold language in S7, for a number of reasons. First and foremost, this language does not reflect the agency's own thinking on what compliance with standards means, as explained in the Fact sheet at page 35. S7's language seems to set up a blank check for third party suit, and completely undercuts Ecology's own use of the benchmarks approach. Can it really be Ecology's intent to have permittees spending time and money on lawsuits, rather than improving stormwater management? We urge the agency to incorporate much of the language from page 35 of the Fact sheet into the Permit itself. This would more clearly establish what are the agency's compliance expectations.

Not only is S7's "strict compliance" language at odds with Ecology's own policies, but it also ignores the serious technical difficulties that exist for any permittee in trying to figure out whether one's stormwater is in compliance or not. What compliance means in terms of sediment standards is a complete mystery, because neither Ecology nor EPA nor anybody else has ever been able to make the requisite connection between pollutant concentrations in stormwater discharges and exceedences of the sediment standards. The use of such "strict compliance" language for human health-based criteria completely likewise doesn't make sense for stormwater, and Ecology itself has acknowledged this in the Fact sheet (page 21). While there is at least some logic in requiring strict compliance with surface water standards, such a requirement is premature when, as now, the agency is in the process of rewriting and revising these same surface water quality standards.

S3(D) and S4(D): Discharge Limits and Monitoring for Discharges to Impaired Bodies

These provisions of the Draft Permit put permittees who discharge into 303(d) listed water bodies, particularly those bodies impaired with multiple parameters, into an impossible and unfair position. First, most permittees have not monitored their stormwater for even conventional pollutants, never mind for the multiple polysyllabic chemicals that constitute the listed parameters for such locations as Elliott Bay and the Duwamish. This makes the Draft Permit's expectation of sudden compliance completely unrealistic. Yet the permittee is expected to know, under S1(C)(7), whether or not they can meet all of S3(D)'s requirements or are excluded from coverage.

Second, these discharge limits are unfair because they set up a "guilty until proven innocent" enforcement mechanism. At the outset, the permit fails to provide the permittee with reasonable notice of what is expected in order to achieve permit compliance for sediment, human health and narrative standards. Ecology's promise to put this critical information in a cover sheet issued at time of coverage is insufficient to provide notice to permittees now. The permit at S4(D) gives no reasonably certain measure of what should be monitored or how. Yet it assumes guilt and sets up an automatic "effluent limit" in the form of the compliance schedule, without any opportunity for the permittee to challenge the underlying assumptions of non-compliance, and without being given an opportunity to appeal the decision.

What makes the S3(D) requirement even more unfair is that, unlike dischargers of conventional pollutants, dischargers to impaired bodies with sediment-derived parameters will most likely never be able to come into compliance. That is because many of the sediment-derived parameters are ubiquitous chemical byproducts derived from the burning of fossil fuels and other atmospheric deposition. These particulates, which are true nonpoint pollutants, settle on impervious surfaces and are washed off into the stormwater, where they become some poor permittee's point source. Other sediment-derived parameters were deposited in the sediments through historic practices that no longer are conducted. In either case, these pollutants are unassociated with the current permittee's industrial operations. Because the permittee has no control over the source, it is unlikely they will ever be able to produce the requisite eight no-detect samples that would enable them to prove out. Thus, they will be driven relentlessly into the compliance schedule (see comments on compliance schedule below).

Another concern is the way this Draft Permit undercuts the TMDL process. If, as discussed above, the Draft Permit presumptively concludes that the discharger is guilty, and imposes an effluent limitation, then what is the incentive for or the purpose of the TMDL? This Draft Permit appears to eviscerate that entire process. We believe that a better approach would be one that energizes and supports the TMDL process, rather than undercutting it. One idea would be that the sole actions required of dischargers under a compliance schedule would consist of (1) monitoring and data collection to determine whether it is a source of the parameter at issue, and (2) funding and support for Ecology to conduct a TMDL. This approach is preferable to the one that Ecology has conceived of in this permit, because it not only is more consistent with CWA mandates, but it also will result in a fair allocation of the pollutant burden.

Finally, from an implementation perspective, we are concerned about whether the requisite accredited and qualified lab personnel and facilities exist for the quantity and quality of sampling and monitoring that this Draft Permit envisions. There are literally hundreds if not thousands of industrial permittees in the state that discharge to urbanized embayments, who will be needing huge number of samples analyzed for multiple complex chemical parameters in a very short period of time. We think that permit delay is appropriate if for no other reason than to assess whether the infrastructure is capable of handling the monitoring requirements without significant error.

S3(D): Compliance Schedule

On the one hand, we commend Ecology for providing a compliance schedule, because it demonstrates that the agency understands the terrible "guilty until proven innocent" position that the Draft Permit puts

permittees in. The compliance schedule appears to be Ecology's attempt to provide a reasonable means to deal with this box. On the other hand, here the cure (the compliance schedule) appears almost worse than the disease (permit noncompliance). The compliance schedule marches the permittee through a series of increasingly expensive actions, without ever providing an opportunity for the permittee to either demonstrate that the previous action was sufficiently effective to achieve compliance, or even whether the next step would be appropriate for the problem at hand.

We suggest, at a minimum, that the compliance schedule provide at least two years in between each "bump up" so that permittees will have the requisite eight quarters of sampling to demonstrate whether the previous action worked or not.

Another concern relates to the assumption that each action will be efficacious in dealing with the underlying source of pollution. As discussed above, for most of the sediment-derived parameters this is patently untrue. Structural and nonstructural source control will not affect many, if not most, of these parameters. To our knowledge, there are no BMPs available that will achieve zero discharge for the highly complex pollutants that are located in these urban embayment sediments. Even when the pollutants are still being discharged, treatment options that are typically used for stormwater were simply never designed to handle these kinds of chemicals. Thus, we have the situation where huge amounts of money may be spent implementing technical solutions that will achieve nothing.

Finally, even if Ecology changes nothing else about their compliance schedule approach, its implementation should be delayed until the agency has finished revising its 303(d) list. Because Ecology is proposing a fairly radical change in the methodology it uses to list impaired water bodies, it seems likely that there may be numerous changes in what bodies are listed and for what. We certainly don't want to be in a situation where we are several years into a compliance schedule, having expended significant amounts of money, only to determine that it was all unnecessary.

S4(A): Benchmark Concept

As noted above, the Port generally supports the concept of monitoring for benchmarks. In fact, we can see no reason why Ecology shouldn't extend the concept to monitoring in impaired water bodies for existing dischargers. The benchmark parameters and values generally appear to be appropriate indirect measures of typical facility discharges and associated BMP performance, even if they do not directly relate to BMP performance. Nevertheless, we do have some concerns about how the benchmark concept is laid out in the Draft Permit.

Our primary concern has already been mentioned, which is that the language of S7 seems to completely obliterate the value of benchmarks. Apparently, once a permittee reports a value for a parameter that is above the water quality standard, then the fact that a different benchmark exists becomes moot. This is particularly true given that copper, lead and zinc benchmarks are at or above water quality standards. Couldn't a third party simply and easily bring suit to enforce on the basis of S7?

A closely related issue is the failure of the Draft Permit to make clear what happens when/if a permittee fails to attain a benchmark. Although the Fact sheet at page 25 states that benchmarks are not water quality criteria or effluent limits, the Draft Permit itself does not. By leaving this vague, the Permit seems to leave open the possibility that failure to attain a benchmark might be a basis for legal action.

Another concern is that the selection of hardness as a parameter that must be sampled if the value for total zinc exceeds the benchmark value for two quarters. We are at a loss to understand why it was included. The EPA's MSGP does not have a benchmark for hardness. Hardness is generally not a BMP performance measure, i.e. we are not seeking to remove hardness from stormwater. The primary, if not sole purpose of analyzing hardness is to calculate water quality criteria for certain metals, particularly copper, lead and zinc. This would appear to further undercut the purpose of having benchmarks. Taking Ecology on their word that the heart of the permit is reliance on BMPs, then we believe

benchmarks should focus only on parameters that are the current targets used for BMP performance evaluations, e.g. TSS, copper, lead and zinc. Hardness should be dropped.

Our final concern regarding the draft permit's implementation of the benchmark concept involves two issues regarding the use of turbidity as a benchmark measurement. First, Ecology has not provided a sound technical basis for establishing a benchmark value of 25 NTU. Given that a value this low will likely cause significant compliance risks for permittees, Ecology's decision should be based on something more than "field experience." Our second concern relates to the choice of turbidity as Ecology's sole benchmark for suspended material. Although turbidity measurement serves a useful purpose in certain instances (e.g. as a field screening tool, especially in combination with settleable solids), turbidity measurement alone is an imperfect measure of suspended material. Turbid water may or may not have a high degree of suspended solids, depending on the type of material causing the turbidity. Turbidity measurement therefore is a poor tool for determining whether the degree of suspended and settleable materials in a discharge poses an environmental threat. Turbidity is also a poor indicator of the performance of BMPs, since individual BMPs are generally designed to provide for settling of a limited range of larger particle sizes, irrespective of turbidity. If, for example, a discharge includes a significant component of clay-sized particles, BMPs at the facility might be operating very effectively at removing the larger particle sizes that pose the greatest sedimentation risk in receiving waters, but turbidity levels could be relatively unaffected. Because total suspended solids (TSS) is the key performance parameter for certain BMPs as outlined in the King County and Ecology stormwater manuals, TSS should be used as the benchmark instead of turbidity. To provide overall consistency with state and local guidance as well as EPA's MSGP, the draft permit should provide for a TSS benchmark at 100 mg/l in lieu of the proposed turbidity benchmark at 25 NTU.

S4(A): Sampling Protocols

Our main concern related to sampling methodology is that for any continuous monitoring program to work for the wide range of businesses and industries under this Draft Permit, it must be reasonably simple and do-able. The sampling criteria in #1, 3 and 4 may be suitable for stormwater studies, where a trained professional is charged with meeting the protocols, but they simply are not do-able for most businesses. Simply put, these sampling criteria require that operators devote their attention to tracking sporadic and interrupted rainfall conditions, and not to business. We simply cannot fathom how this is going to work successfully for many of our tenants.

Assuming that the permittee is able to meet the basic sampling protocols, we have some additional suggestions for how the monitoring program could be improved so that the results of the sampling are meaningful.

There likely will be problems with using the months of July, August September as one quarter, given that these are the driest three months. Many permittees will need to file variances because of an inability to obtain samples. To prevent this problem, the agency should consider changing the quarters, so that June, July and August are "summer." This will lessen the administrative burden on Ecology.

Instead of just grab samples, allow for the option of multiple grab samples that are manually composited into a single sample (this is a more effective measure of BMP performance).

Where visual monitoring of outfalls is impossible because they are submerged during all or some tides, allow for the option of substituting a visual inspection of whether the BMPs are there and working

The provisions for the storm event sampled should relate to 24-hours or no recordable rainfall, instead of using the term "no-discharge." This is important

Given the inevitable base flows that will be present between storms. In some cases, there could always be a base flow discharge, invalidating the successive storm given the current language of "discharge."

In S4(A)(1), the nonstormwater discharges should be expanded to include the standard list of acceptables, such as irrigation over spray/runoff, washing without soaps, etc.

The analytical methods for "petroleum-oil and grease" are not appropriate. The methods listed are outdated and engender positive bias from non-petroleum products extracted by the solvents used in the analytical process. The Freon solvents used in these analytical methods are outlawed, with limited supply available in existing lab stocks (which should be declining), or on the black market. The correct method should be NWTPH-Dx, a gas-chromatographic method which yields both the oil and diesel-range fractions of petroleum products. An alternative method, though less suitable than NWTPH-Dx, is the HEM, EPA 1664 method.

In S4(E), the phrase "…representative of the volume" has little or no meaning in the context of this Permit, that specifies grab samples taken in the first hour, irrespective of volumetric discharge rates.

In S4(F), the accreditation requirement exemptions for flow, temperature, settleable solids, and conductivity are irrelevant because these are not required sampling parameters in this Permit. Also, the language is confusing and circular. What it should say is that handheld units are acceptable as long as they are properly calibrated, with records on file.

S4(B)(2): Monitoring for Air Transportation Industry Group

Although the Port's operations at Seattle-Tacoma International Airport are not covered under this Draft Permit, we would nevertheless like to comment on the selection of 30 mg/l as an appropriate benchmark for BOD5. We are unsure of how that number was derived. It appears to be an unreasonably low value, given that the same 30 mg/l level is required as an effluent limit for point discharges from wastewater treatment plants, at the edge of a mixing zone, in the water column, after secondary treatment. We fear that it is unreasonable to expect stormwater discharges from most airports to meet that same standard at the end of pipe, without treatment.

S9(5): Applicability of SWM Manual

We agree with the concept of requiring all permittees to apply the technical standards contained in the SWMM. However, there are two aspects of the language in the Draft Permit that need to be fixed. The first is in S9(5)(c), which states that "existing permitted facilities that comply with standards are not required to redo their SWPPP and BMPs…" What does "comply with standards" mean? Compliance with water quality standards? As discussed above, given the present state of affairs, it is virtually impossible for a permittee to determine whether or not this has been achieved. Including this phrase would seem to make the entire section inapplicable to anyone. If what is meant is to comply with engineering design standards for SWM, then this is reasonable, and should be clearly stated.

Another clarification that is in order is under S9(5)(c). That section should state that existing facilities undergoing redevelopment need apply the SWMM requirements only to those portions of the facility that are actually undergoing redevelopment. Otherwise, for large facilities this would completely undercut S9(5)(b).

Thank you for the opportunity to comment on the Revised Industrial Stormwater General Permit. We look forward to a much-improved Final Permit.

Public Employees for Environmental Responsibility

Thank you for the work that you and Ecology's stormwater team have done to draft a permit to help ensure compliance with the Clean Water Act and Washington State's water quality standards. With the addition of monitoring, clarification of the pollution prevention plan requirements and stated restriction of compliance schedules, the permit comes closer to creating a system that will foster compliance with water quality laws. These are substantial improvements over the current permit that has been in place for the past six years.

PEER joined the appeal of the initial draft permit at the request and suggestion of public employees, current and former, who were concerned that it violated the intent of the Clean Water Act and failed to provide adequate oversight to prevent water quality degradation.

PEER's comments request several changes to ensure the permit meets legal requirements, protects water quality, and does not create workloads or expectations that cannot be fulfilled by the Washington State Department of Ecology (Ecology). The requested changes will also help support the environmental goals that Ecology and EPA agreed to in their current Performance Partnership Agreement (PPA). The PPA is a binding contract that defines the environmental goals for Washington State, asserts the terms and conditions under which Ecology receives federal funds to fulfill their contractual obligations for air quality, water quality, and hazardous waste management, and defines accountability measures to assess the results achieved. As stated on page four of the PPA, "This agreement constitutes the Ecology and EPA work plan for the award or continuation of these grants."

The contract's stated goals for water quality are to:

- Meet water quality standards in water bodies that are currently polluted;
- Meet the biological needs of endangered and threatened species;
- Enhance chances for recovery;
- Restore and protect water quality through inclusive watershed planning; and
- Achieve environmental protection through compliance assurance.3

PEER fully supports these goals and the need to further improve the industrial stormwater permit to meet them.

To some extent, the shortcomings of the draft permit reflect Ecology's budget deficit and the state's failure to create sufficient and stable funding to finance environmental protection and Ecology's associated mandates. PEER fully supports the need for a thorough and objective evaluation of Ecology's current permit fee structures, including the industrial stormwater permit, and legislative authorization to adjust the permit fees so they are adequate to help Ecology carry out its mandates. This is unlikely to happen without support from the public. Such support is unlikely to come forth until the general public understands how the current situation is contributing to degradation of public waters and a triage approach to technical assistance and enforcement.

Our core comments below are followed by specific comments on the referenced draft permit conditions. For ease of reply, we have numbered each of our comments (C1, C2, C3, …) Thank you in advance for your response to them and your full consideration of the changes needed in order to create a fair and effective permitting structure to minimize pollution from the 1,300 + industrial facilities that will be covered by the Industrial Stormwater General permit.

Core Comments

C1) Although substantial improvements have been made from the current permit, in places the proposed permit lacks adequate provisions for Ecology to assess and advance compliance with the law, places Ecology at risk of future litigation, and creates conditions that will contribute to more water quality degradation.

To remedy this predicament, Ecology should delete from consideration all special provisions and allowances for which Ecology lacks the resources to provide adequate oversight, monitoring,

[3] US Environmental Protection Agency and the Washington State Department of Ecology, July 18 2001, Environmental Performance Partnership Agreement for July 1, 2002 – June 30, 2003, page 4.

determinations, and associated assessments as required by state and federal laws. We believe this action is needed because some of the proposed allowances will violate the law (in practice), create inequities, and divert Ecology's limited resources to the administration of special favors, such as mixing zones, rather than the administration of a level playing field and adequate technical assistance to the permittees.

C.1.a. If Ecology lacks the resources to adequately assess and oversee mixing zones, exposure certificates, and other special provisions, such provisions should be prohibited and eliminated from the permit. Mixing zones cannot legally be authorized by Ecology if Ecology does not have the resources to define, evaluate, and assess them as required by the Clean Water Act and WAC 173-201A-100, Washington State's mixing zone regulation.

C.1.b. If Ecology lacks the resources to review the Stormwater Pollution Prevention Plans, the proposed permit is largely ineffective. Ecology defines the plans as "the very heart of permit requirements" 4 and as such they should be. However, the draft permit does not require the plans to be reviewed by Ecology nor does it require site checks to assess whether or not the plans are ever implemented. If the plans are not going to be reviewed or assessed with site checks, they should not be the heart of the permit. To remedy this, Ecology's limited resources should be directed at technical assistance and enforcement actions to ensure that the plans and associated AKARTs are in place and functioning. The heart of the permit requirements has no pulse if resources are not directed to it so that staff can assist facilities with plans, conduct site visits, and enforce associated provisions of the permit.

C.1.c. Because Ecology's lack of resources erodes its ability to fulfill its legally mandated responsibilities, Ecology should seek legislative authorization to raise the permit fee, and honestly and factually inform the legislature, EPA, and the public that the current circumstances put Ecology at risk of failing to meet its legal mandates and having to spend public funds to defend itself from appeals and lawsuits from environmentalists instead of using the funds to carry out its mandates to protect the environment.

C.1.d. If PEER'S assertions regarding the lack of resources are incorrect, then Ecology's responsiveness summary to these comments should state as such and define: 1) how they will provide the legally mandated oversight, assessments, determinations, and associated actions to administer the special provisions proposed by the draft permit; 2) what resources they will use to do so; 3) and how the diversion of resources for such oversight will impact other elements of program administration such as the ability to conduct site visits, provide technical assistance, and enforce the law.

C2) The permit does not define how compliance will be assessed and enforced. While the permit clearly calls for compliance with water quality and sediment standards, this mandate is muted by numerous loopholes and provisions. Without closing the loopholes and defining more clearly how and when compliance will be checked, the permit has the potential to be a lengthy paper exercise where compliance is measured by whether or not paper work was turned in instead of assessing whether or not the facility is violating the law.

C.2.a. Along with other suggested modifications to close the loopholes (see comments under specific permit conditions) the General Conditions section of the permit should define how Ecology will evaluate the facilities for compliance with the permit provisions. A definition of compliance is a vital part of a functional permit system and an important part of notifying permittees of Ecology's expectations and compliance assessment methods and schedule.

C3) Because the permit will be used to regulate over 1,300 industrial facilities that discharge stormwater, it has the potential to either help---or hinder—salmon recovery efforts. Therefore, EPA and the Department of Ecology should complete Endangered Species Act (ESA) consultation on the permit.

[4] Washington State Department of Ecology, March 19, 2002, DRAFT Fact Sheet for Industrial Stormwater General Permit, page 45.

The current Partnership agreement between EPA and the Department of Ecology requires that "Major CWA programs and key projects will successfully undergo ESA consultation" 5 The general industrial stormwater permit constitutes a major CWA program and should not be finalized until a thorough consultation is completed. PEER fully supports the federal services right, and responsibility, to complete an ESA consultation on this draft permit.

Specific Comments Regarding the Proposed Draft Permit Conditions

S1. Permit Coverage

C4) Delete item S.1. B.1 (page 5) Facilities should not be able to escape coverage because they submit a form to Ecology. The no exposure element (page 29 of draft permit) should be rewritten to require more accountability and oversight and such requirements should be referenced here. If Ecology cannot provide adequate oversight to evaluate "no exposure" applications, then they should not be allowed.

C5) Delete item S.1.C.7 (page 7) which excludes facilities discharging to Section 303(d) listed waters from coverage unless they can meet the special conditions defined by S3D. The compliance schedule and associated conditions defined by S3D (page 17) allow polluters to discharge to 303(d) listed waters for five years and at the end of five years the "big hammer" is to discuss their compliance attempts via a report they are required to write in their SWPP. This condition fosters water quality degradation and is not acceptable. Rather than providing a compliance schedule, Ecology could consider prioritizing technical assistance and enforcement to facilities in 303(d) listed waters that fail to comply with the law. In effect, these facilities have already had six years to install BMPS to reduce water quality violations. Although the new permit states effluent limits it does not impose new requirements to meet them other than BMPS—the same thing they were required to do six years ago. They do not merit another five. Allowing eleven years for compliance is a violation of the intent of the Clean Water Act and creates inequitable conditions. If anything, these discharges should be required to comply sooner –rather than later- because they are discharging to degraded waters.

C6) Enhance item S.1.E (page 8) to require coverage for facilities located in areas with porous soils, shallow aquifers, aquifers that have been defined by Ecology's Aquifer vulnerability project (as described in Ecology's year 2000 Section 305(b) report page 28) or other site conditions that increase the potential for groundwater contamination. As drafted, it appears that coverage would occur primarily after the fact as a result of complaints or contamination rather than pro-actively defining a prioritized list of facilities that should be required to comply with the permit conditions.

S2. Coverage Requirements

C7) .2.B. coverage and SWPPS (page 8) - The permit should require all facilities to submit updated SWPPS. PEER fully supports the modifications to this draft permit that now require the facilities to have their SWPPs completed and implemented before a new facility starts operation (B.3.c) or an existing facility does a process change (B.4.c). We also fully support the definitions of completed and implemented that are provided.

However, as drafted, the requirement to submit updated SWPPs appears to be limited to new or process change facilities. This requirement should be extended to all facilities covered by the permit whether they have applications currently pending, are currently under permit, are existing facilities, municipal facilities previously exempt, or other such facilities that are currently not required to submit an updated SWPP.

To assist facilities with compliance, Ecology should consider working with several representative facilities to create model SWPPS that others could use as a starting point.

[5] US Environmental Protection Agency and the Washington State Department of Ecology, July 18 2001, Environmental Performance Partnership Agreement for July 1, 2002 – June 30, 2003, page 58.

C8) S.2.B.5 - Mixing zones (page 10) - Provisions allowing for mixing zones should be deleted given Ecology's resource constraints and the inequities that mixing zone allowances would create. Along with violating state water quality laws by creating inadequate determinations and nit having the resources to administer mixing zones, the mixing zone provision creates inequities. Those who have the money and connections to pursue mixing zones will do so. Those who do not will be left to comply with the law without getting access to the loopholes.

S.2.C Compliance Schedule (page 11)

C9) S.2.C. 1 and 2 (page 11) PEER supports the general provision prohibiting compliance schedules and commends Ecology for incorporating this into the revised permit.

C10) We adamantly oppose the provision allowing compliance schedules for the named facility types if such schedules are "authorized by Ecology in writing." This provision sets up conditions that would foster inequities, political favoritism, an increased workload to haggle over the allowances, and violations of a meaningful public involvement process. This provision should be deleted from the permit.

Ecology has a general policy of pursuing technical assistance and education prior to taking substantial enforcement actions. In the case of these permittees, this policy will likely serve them well by ensuring that they in effect, do have a grace period. This policy is an appropriate approach to a fair and effective compliance program for facilities regulated by this permit. A compliance schedule is not.

C11) S.2.D (page 11) – The public notice requirements must comply with 40 C.F.R. 124.10.(c) (1) (ix) and (c)(4). Ecology could facilitate notification by creating a page on Ecology's website where citizens could list which WRIA they would like to receive notifications from. The permittee in turn could consult that list and ensure that the parties on it receive notification along with other standard "interested parties." This would provide some assistance to the permittees and the public at limited expense to Ecology. The web page could also be used to list pending permits so that the public would be able to consider whether or not they wanted to request a public hearing. Otherwise, it is unclear how the public would know that a permit is pending for a specific facility.

These changes are needed in order to improve public participation and advance the environmental goal that Ecology adopted in its grant contract (PPA) with EPA. Namely to "*Restore and protect water quality through inclusive watershed planning.*"6 Inclusive watershed planning requires the involvement of the community –not just the chosen few on the watershed committees. Improved public notice would help remedy this.

C12) S.2.E.2a (page 12) – This item should be changed to ensure that along with notifying the applicant in writing and identifying issues that must be resolved, Ecology also notifies interested parties.

C13) S.2.F –(page 13) – PEER supports the provision stating that the permittee must comply with local government requirements and that the most restrictive of the two permits shall be followed.

In order to assist the permittees with this element, the final permit or fact sheet should include a contact list of local government stormwater personnel and associated resources.

It is unclear why coverage applications are required to be sent only to the six named local jurisdictions. If the local governments do not have copies of the industrial permitee's application for coverage, it is unclear how they will help assess the facility's compliance with local government requirements. Please explain why this is limited as such or consider extending the requirement to all local government jurisdictions.

[6] US Environmental Protection Agency and the Washington State Department of Ecology, July 18 2001, Environmental Performance Partnership Agreement for July 1, 2002 – June 30, 2003, page 4.

S.3. Discharge Limitations

C14) S.3.D.1 (page 16) – This element must address how facilities will be handled if they get coverage and are not in 303(d) listed waters or waters with an established TMDL but later find that the status of the waterbody has changed and they are in 303(d) listed waters. The permittee would need to be notified of this change to ensure compliance with the provisions that apply to 303(d) listed or TMDL waters.

C15) S.3.D.2. (page 17) – PEER fully supports the provisions requiring compliance at the point of discharge and Ecology's incorporation of this provision.

C16) The proposed compliance schedule should be deleted from the permit. As stated in comment C5, this provision violates the intent of the Clean Water Act, creates inequities, and will contribute to degraded waters. In addition Ecology has not demonstrated how this compliance schedule complies with state and federal water quality laws and sediment criteria or that they have the resources to effectively administer the proposed compliance schedule and the increased workloads it would likely generate. For these reasons it should be eliminated.

S.3.E (page 18) – Mixing Zones

C17) As stated previously, the use of mixing zones should be prohibited. Mixing zones cannot legally be authorized by Ecology if Ecology does not have the resources to define, evaluate, and assess them as required by WAC 173-201A-100 and all associated provisions. State law requires Ecology to make a clear finding that the mixing zone would not have a "reasonable potential to cause a loss of sensitive or important habitat, substantially interfere with the existing characteristic uses of the water body, result in damage to the ecosystem, or adversely affect the public health." (WAC 173-201A-100(4). As drafted, the permit provides little assurance that an adequate evaluation would occur. In addition, Ecology's constrained financial resources do not provide assurances that Ecology has the ability to administer the provisions and reviews required by law before mixing zones are allowed. Under these conditions, mixing zones should be prohibited.

S.4. – Monitoring Requirements

C18) PEER recognizes the challenge of creating a cost effective, yet meaningful, monitoring program for small industrial facilities that discharge stormwater and fully supports the inclusion of monitoring requirements and the associated requirements for visual inspections and SWPPS.

In order to improve the effectiveness of the monitoring we offer the following suggestions:

C19) S.4.4. This statement should be deleted and replaced with the statement in the fact sheet for the draft permit, which states that the monitoring must be preceded by at least 72 hours of no rain.

C20) The permit should reference the forthcoming monitoring guidance that is mentioned in the fact sheet for this draft permit. Along with sampling protocols, the guidance should provide a weather service phone number and website address that permittees could access to anticipate weather conditions and ensure they are sampling at the appropriate times.

C21) The samples that are submitted should be accompanied by weather data (easily available from the web) for the time period and region in which the sample was taken.

C22) Pending guidance from Ecology's EAP group regarding stormwater sampling should be mentioned with a note that such guidance will be incorporated to the extent that it will help ensure more cost effective and meaningful sampling.

C23) It is unclear why monitoring will not begin until 2003. This should be changed to require sampling to start in the last quarter of 2002. (S.4.A)

C24) Along with a site visit, Ecology's evaluation of environmental risk should include a review of the literature, maps, and other resources to assess presence of ESA species, porous soils, shallow groundwater, low flows, isolated wetlands, and other site conditions that would increase risk to the environment.

C25) Visual monitoring requirements are a useful tool but are somewhat meaningless without requirements to complete an inspection form, take site photos, or provide and submit other associated documentation regarding the results of the visual monitoring. Without these requirements, the visual monitoring is just a smoke break or stroll around the site to get out of the office for awhile. To help guide the stroll, Ecology should provide a form that permittees could use to record the results of their visual inspections and should require this to be submitted along with the quarterly sampling results.

C26) The permit should state how the proposed "benchmark values" will be used to assess compliance with the Clean Water Act and whether or not effluent limitations and water quality standards are being met.

S5. Reporting and Record keeping Requirements (page 26)

C27) Along with submission and retention of the SWPPA and monitoring reports, the permittees should be required to submit and retain the results of the visual inspections they are required to do. In order reduce the burden to both the permittees and Ecology, the reports should be submitted electronically.

In their recent evaluation of state's enforcement of the CWA, the Office of the Inspector General recommended electronic submission of stormwater reports and cited several options.7

C28) S.5.C. Recording of results should include: a) recording weather and rainfall data as reported by the NOAA website or an associated local weather service. This information is easily accessible to the permittee; and b) a signed statement that the information provided is true along with a warning that submitting false information is a violation of law (RCW 40.16). Such provisions are a standard part of many state forms and record submittals; c) maps, photos, or other documentation to help ascertain that the sample was taken at the point of discharge.

C29) S.6.D "No Exposure" Certificate (page 29) must be rewritten. Ecology should not grant these de-facto. Instead, Ecology must make a determination complete with documentation to support their conclusions and provide their findings in writing to the person making the request and to the public records associated with this permit. This element needs to be rewritten to clarify that no certificates will be granted until a thorough review is completed and the results are provided, in writing, to the applicant. As drafted, the permit sets up an expectation that the "no exposure" certificate will be granted after 60 days even if Ecology has not reviewed the request. This is not acceptable.

S7. Compliance with Standards (page 29)

C30) S.7.A Should be deleted for the reasons previously stated.

S.9. Stormwater Pollution Prevention Plan for Industrial Facilities (page 32)

C31) S.9.3. PEER fully supports the requirements to maintain a copy of the SWPP for each facility at the appropriate regional office.

C32) In order to expand public access to these plans, and reduce paperwork, Ecology should require the SWPPS to be sent electronically to HQ so that they could then be posted on the web or otherwise made available to the public.

[7] Office of Inspector General Audit Report, Water Enforcement: State Enforcement of Clean Water Act Discharges Can Be More Effective. Report No. 2001-P-00013. August, 2001.

C33) S.9.A. 4. As stated previously, delete "unless authorized by Ecology." This creates inequities, loopholes, and an additional workload. Flexibility and numerous grace periods are already provided by Ecology's policy to provide technical assistance and education prior to enforcement.

C44) Under item 4. add an element (d.) to require that all updates to the SWPP be noted and that the plan's title page defines the date it was last updated and by whom.

C45) S.9. A.5.b. In order to ensure that all permittees are required to implement AKART, this section needs to be amended to require all permittees to update their SWPPS and associated BMPs by using the most recent Stormwater Management Manual for Western Washington (and Eastern once it is completed). Otherwise, the permit does not require AKART. Existing facilities –which are and will continue to be the majority of the regulated facilities –should not be exempt from requirements to update their SWPPS under the guidance of the new stormwater manual.

C46) S.9.B.1.a. Facility description –permittees should be required to list the following and provided with suggestions for where to get the information if they do not know:

a.. The watershed they are in (provide weblink with map on it);

b. The WRIA they are in (weblink to Ecology map);

c. Whether or not they discharge to 303(D) waters (provide Ecology contact # for this);

d. List threatened or endangered species associated with the waters they discharge to.

This information is critical to the facility description, contributes to public understanding of permitted facilities in their watershed, and serves as an educational element for the permittee. Gathering the information should not be burdensome as most is available on the web or via a phone call. In addition, the process of gathering the information would likely increase the permittee's awareness of their watershed and foster more compliance on their part.

C47) S.9.B.1.b. Site Map --This should be amended to allow permittees to submit an aerial photo (readily available from DNR) or other photos showing the entire site and required elements if such a photo would more readily define the site than the drawn map that is currently required. As drafted, the drawing of the map could be difficult for some facilities and a photo might be easier and more descriptive of the site.

C48) S.9.B.2. Monitoring Plan (page 35) –The monitoring plan elements are a good baseline and should be amended to require a few more specifics including:

a. photo (not just identification) of the points of discharge;

b. a check list for visual monitoring that is based on a base checklist provided by Ecology. As previously stated, without some guidance from Ecology the visual monitoring required could easily become a meandering stroll around the site.

c. A requirement that the identification of "where samples will be taken" include <u>where they will be taken in relation to the point of discharge</u>. To facilitate this, permittees should be encouraged to take a photo of the point(s) of discharge and indicate on it the sample location.

C50) Although not part of the permit requirements, as part of Ecology's educational efforts on the permit, Ecology could create a model-sampling plan that would address some of the procedural requirements. As these will likely be the same for more of the permittees, they could use a boilerplate document (accessible on the web) to help address these elements provided that Ecology made it clear which elements were boilerplate (i.e. QA/QC information) and which elements would have to be defined specific to the facility.

C51) S.9.B.3. BMPs – the intro should reference the current Stormwater Manual as the primary resources for BMPs.

General Conditions

C52) G5 The permit should note that failure to have created and implemented a SWPP is a situation where revocation may be required. Although this may be implicitly covered by item G.5.A, because the plans are the cornerstone of compliance, they merit specific mention.

C53) In the "Definitions Section" the permit should provide a definition of AKART, and as part of the definition, define the most current Stormwater Management Manual as the appropriate reference defining AKART measures.

The new draft permit is a significant improvement over the current system and Ecology should be commended for making advances to issue a more effective permit. However, these advances are diluted by the mixing zone, no exposure, and compliance schedule provisions being proposed. These should be removed from the permit as suggested in our comments.

We urge Ecology to fully consider its mandated responsibilities and the most effective way to use the limited funds available to reduce stormwater pollution from industrial facilities. Thank you in advance for your full consideration of these comments and written response to them.

Puget Creek Restoration Society

The following comments are from Puget Creek Restoration Society and are concerned with "The Industrial Stormwater General Permit" that is currently under review and in the process of receiving public comment.

Puget Creek Restoration Society is dedicated to protecting, enhancing and restoring the Puget Creek Watershed and similar streams, wetlands and green spaces on Commencement Bay and Puget Sound. Through hands-on restoration and research, educational outreach and by increasing environmental awareness, we seek to preserve this important habitat so it can become an example of what people can do to protect and restore the environment in an urban setting.

As in any organization we have an active source of volunteers. Last year, over 700 volunteers were involved in various activities. Currently about 250 individuals have expressed a desire to become regular members.

A major concern that Puget Creek Restoration Society (PCRS) has with the current draft permit is in the indiscriminate use of mixing zones to diffuse contaminated stormwater into the receiving bodies of water of this state. This concern is reflected in Department of Ecology (DOE) allowing such large mixing zones, the overlapping of mixing zones and allowing a gauntlet of mixing zone potential. What we mean by a gauntlet is that potentially there could be one mixing zone following another and another so on, as in the Puyallup River, which salmonids etc. would have to swim through for miles. Also the contaminated stormwater in the up stream mixing zone is then mixing with the next down stream zone and thus these mixing zones eventually are not fully mixing with the existing base water, that was originally used to assess the duration and quantity of water needed to mix the contaminated stormwater into. In all actuality the water is getting more and more contaminated as it flows downstream. Thus the criteria used to calculate how much area that the outflow pipe needs to diffuse the stormwater is based on uncontaminated river water but in actuality it is not, what is happening is that a percentage of the basal water is contaminated from the up stream mixing zone. Thus the accumulation of contaminants is occurring as the river water flows downstream through more and more mixing zones, thus raising the level of pollution in the system that salmonids etc. reside in. What PCRS feels should be done is the total treatment of stormwater before it is discharged into a receiving body of water and that the use of mixing zones not be instituted at all. Mixing zones are not a cure but actually are adding to the problem.

Another concern is one that is applied to the visual monitoring reports. If these reports only have to be filed on site then this is leading to a possible problem "that detection of potential damaging discharges

will not happen in any way to prevent a problem-if permittee chooses not to let DOE know of visual monitoring problems with discharge." If these visual monitoring reports are not turned over to DOE at the time of the report period then there is no way for DOE to prevent any potential problem from developing, thus no way to develop a prevention plan but ultimately waiting until a problem happens instead of preventing it.

If the industries are going to be allowed to perform their own turbidity testing etc. then these meters need to be calibrated on a routine schedule and to DOE specifications. Also DOE should develop protocol as to what are acceptable instruments to use and which are not. There should be recalibrating schedules in place to insure that these instruments are taking accurate measurements.

A major concern is who is going to determine if there is a ground water contamination problem or if one could possibly exist. Will DOE go out on regular intervals and check ground water or will DOE wait until a complaint is filed and ground water is contaminated severely? PCRS feels that testing on a regular basis is needed to prevent potential contamination from taking place instead of waiting until it is contaminated then doing something about it.

There must be a measure in place to assure the public, that there is follow up checking in the cases where applicants apply for "no exposure." This must be done so that safeguards are in place that will fully decree that when a business says it has "no exposure" that indeed that business falls under the "no exposure" scenario. Just filling out a form doesn't give that security to the public that is desperately needed.

PCRS is against suspending sampling for any business that has the potential to discharge contaminated stormwater into receiving waters even if they go for long periods without any problems. Their business is documented as having the potential to discharge contaminated stormwater and allowing sampling to stop could lead to a disaster. An event or accident could happen and if sampling isn't always done then there would be no way to detect potential hazards to this states waters. Thus sampling for all parties over the entire time period of this stormwater permit needs to be in place and no suspension of sampling should be done.

In the Permit is should define exactly when permittee is "out of compliance" (not generalizing when they could be out of compliance or giving variances) and if necessary the protocol needed to make sure permittee gets back into compliance (legal, financial or otherwise). Also if compliance by a permittee is exceeded then the public should be informed and a response by DOE to the public should be made as to what DOE is doing to make sure compliance by permittee is reinitiated. Also if the permittee is out of compliance then that permittee should be referred to the new manual and protocol of that manual to get back into compliance through the requirements in the new Stormwater Management Manual.

The Permit Manual needs to provide a way for the public to know if any facility is out of compliance. This is to insure that the public has full disclosure of any potential health, environmental etc. hazards.

Finally, the design criteria for this permit for these facilities should address the worse case scenario and not an average scenario. This way there are measures all-ready in place so that any possible unexpected accedence's of discharge limits can be addressed prior to them causing potential harm to the environment.

Puget Creek Restoration Society feels that in order to properly protect the environment and human health that the above measures should be incorporated into this Industrial Stormwater General Permit. Unless these concerns are properly addressed PCRS can't support this General Permit as it now is written.

Puget Soundkeeper Alliance

Thank you for this opportunity to respond to the revised Industrial Stormwater General Permit. As the lead appellant in the appeal of the 2000 permit, we appreciate the amount of time you and others at the Department of Ecology (Ecology) have spent revising and improving this permit.

Although stormwater is the largest source pollutants impairing waterways in or draining into Puget Sound, it is still virtually unregulated in Washington State. Stormwater discharges from industrial facilities have been permitted since November 1992, yet compliance with water quality standards has never been required. Ecology has assumed that stormwater runoff from industrial facilities implementing Best Management Practices (BMPs) from the Stormwater Management Manual (2001) "should generally comply with water quality standards and protect beneficial uses of the receiving waters." Yet, Ecology also states in the next sentence "compliance with the manual may not ensure compliance with water quality standards."

The Puget Soundkeeper Alliance's (PSA) interest in stormwater regulation is significant. Last fall, PSA, dedicated its limited resources to protecting and preserving Puget Sound by focusing its efforts on obtaining stormwater permits that comply with water quality standards and meaningfully advance stormwater regulation to stop the decline in water quality in the Puget Sound ecosystem. PSA has also dedicated its resources to monitor stormwater permit implementation and compliance and will continue to enforce these permits under Clean Water Act as needed.

General Comments

PSA applauds Ecology's inclusion of compliance with water quality standards as a requirement of this permit. Unfortunately, the permit provides significant loopholes that allow virtually every industrial facility numerous ways to avoid actual compliance with water quality standards. Standard mixing zones, compliance schedules in 303 (d) listed waters, no exposure certification, and stormwater manual requirements are just some of the opportunities provided by Ecology to these industrial facilities.

PSA also applauds Ecology's inclusion of monitoring and reporting requirements as a way to begin to identify and quantify stormwater pollutants and document harm to receiving waters. However, the monitoring requirements are significantly watered down from the requirements in the EPA's NPDES Multi-Sector General Permits for Storm Water Discharges Associated with Industrial Activities. Why is Ecology requiring monitoring of only certain pollutants?

Finally, PSA is concerned that the permit is framed based on Ecology's limited financial and staff resources, rather than by its mission to "protect, preserve and enhance Washington's environment, and promote the wise management of our air, land and water for the benefit of current and future generations" and "prevent pollution, clean up pollution, and support sustainable communities and natural resources." Lack of funding or staff resources does not excuse Ecology from implementing its mission or achieving its goals.

Ecology's failure, in this permit, to make determinations for mixing zones and no exposure certificates provide entirely too much slack to industrial facilities that have shown little interest in complying with the 1995 permit. According to the permit Fact Sheet no more than 25% of industrial facilities can be considered in compliance with BMPs from the 1995 permit. And, according to PSA's review of 86 stormwater permittees in the Duwamish River, only 34% (29) had a Stormwater Pollution Prevention Plans (SWPPPs) as of March 21, 2002 and only 6% (5) had completed and submitted the required wet and dry season inspection reports.

PSA believes that the burden of proof should be on the permittee to demonstrate AKART and no exposure and that Ecology make the appropriate determinations that AKART is being achieved that there is no stormwater exposure to pollutants.

Specific Comments by Permit Section

S2 Coverage Requirements

S2.B.3.c. New Facilities

PSA supports Ecology's request that all new facilities prepare and submit a SWWPP prior to commencing their industrial activities. This provides the public with the opportunity to evaluate exposure, best management practices, storm drain locations, receiving waters and other information necessary to determine compliance with the permit.

PSA recommends that Ecology add a paragraph "d." to S2.B.3 that requires existing facilities to submit and maintain a "current" copy of their SWPPPs at the appropriate Ecology region. PSA has reviewed all of the SWPPPs sent to Ecology last fall from our request in the Duwamish River corridor. Out of the 86 SWPPPs requested, only 29 were sent to Ecology. Of these 29, only 17 submitted inspection reports, and only 5 submitted a reasonable number of inspection reports to consider the SWPPPs in compliance with the 1995 permit requirement.

There is no way that PSA will be able to assess these SWPPPs for compliance with the 2002 permit, unless PSA makes another public disclosure request for those same 86 permits. And, PSA is not just interested in the Duwamish River; we cover all of Puget Sound. It will be much more efficient if a "current" copy of the SWPPPs is required to be maintained at the appropriate regional offices. Visual inspections should be included with these "current copies."

Ecology must insure that the SWPPPs, the "heart and soul" of the 2002 permit, are meaningful and the only way to do this is through requiring the submittal and maintenance of a "current" SWPPPs on file.

S2.C Is There a Compliance Schedule for Developing and Implementing the SWPPP?

PSA recommends that section S2.C.2.a. and S2.C.2.b be modified to either delete the "unless otherwise authorized" or require public review of Ecology authorized compliance schedules prior to approval.

S2.D What are Public Notice Requirements?

PSA recommends that the permit require a copy of the public notice be sent to Ecology. Ecology should then post it in an appropriate location on its web page so interested parties can more easily track new facilities requesting permit coverage, facilities with significant process changes or additions or modifications to mixing zones.

It is unreasonable to expect that interested members of the public will be able to subscribe to every major publication in the state to monitor the permit process. Providing this information on the Ecology web page, even in an abbreviated form, would provide a significant service not only to the public, but to Ecology regional offices tracking permits in their watersheds. This will improve public scrutiny and result in better compliance and enforcement.

If Ecology does not have the resources to implement this, perhaps a list of interested parties could be provided by Ecology to the facilities requesting the permit or modifications.

S2.F Does Coverage Preempt Local Government Requirements?

PSA strongly supports the language in this section, which requires the permittee to comply with the most restrictive requirements where the permit and local government requirements overlap.

S3. Discharge Limitations

S3.D Stormwater Discharges to Impaired Waterbodies

PSA strongly supports the permit language in this section that requires compliance with water quality standards for new facilities and significant process changes (S3.D.1) and existing facilities (S3.D.2). This is a tremendous step forward towards regulating stormwater in the state.

PSA recommends that Ecology clarify that permittees must comply with the State's water quality standards for each pollutant causing a violation at the location named on the state's "current" 303(d) list. The draft permit language just says "the State's 303 (d) list." The current 303 (d) list is dated 1998 and it is expected that a new 303 (d) list will be published during the life of this permit. This list will contain new impaired waterbodies and new pollutants. Permittees should be required to modify their activities based on the "current"303 (d) list.

S3.D.2 Existing Facilities

PSA does not support the inclusion of compliance schedules for impaired waterbodies in this permit. In addition, the compliance schedule never actually requires compliance during the life of this permit. Five years after a permittee exceeds effluent limits in an impaired waterbody, the permittee must only prepare a full report, in its SWPPPs, of the actions it has taken and it plans to take to achieve compliance. It should be noted that this report is not required to be submitted to Ecology, nor does the public have access to this important information without making a public disclosure request.

PSA recommends that this compliance schedule be deleted from the final permit.

S3.E Mixing Zone Descriptions

PSA does not support the use of mixing zones to achieve water quality standards. However, given that mixing zones are legal under state law, PSA believes that permittees and Ecology should be required to follow the provisions of WAC 173-201A-100.

This section of the permit allows every permittee to obtain a standard mixing zone to insure that they do not have to comply with water quality standards at their point of discharge. In order to achieve a mixing zone the permittee is required to only check box on a one-page application form certifying that they are implementing AKART and are protecting beneficial uses of the receiving water. Ecology approves the mixing zone if the permittee does not receive notification from Ecology. Coverage under the permit automatically begins the 31st day after Ecology received the permit, the 31st day after the public comment period or the effective date of the permit depending upon, which ever date is the latest date.

PSA believes that the burden of proof must be on the permittee to obtain a mixing zone. Documentation supporting that the permittee has fully applied AKART should be submitted to Ecology to make the required determination as required by WAC 173-201A-100. Ecology should not grant a mixing zone "unless the supporting information clearly indicates the mixing zone would not have a reasonable potential to cause a loss of sensitive or important habitat…"

There is also, no way in this process to determine if mixing zones are overlapping, or whether a barrier "to the migration or translocation of indigenous organisms" has been created which could cause harm to the ecosytem.

PSA recommends that the mixing zone form be modified to provide the substantive information Ecology will need to determine whether or not a mixing zone is appropriate and that Ecology be required to make this determination prior to granting the mixing zone.

If Ecology does not have the resources to make mixing zone determinations, then it should not allow mixing zones in the permit. How else can Ecology legitimately achieve its mandate to "protect, preserve and enhance Washington's environment" and "prevent pollution, clean up pollution, and support sustainable communities and natural resources"?

S4 Monitoring Requirements

PSA strongly supports the inclusion of monitoring requirements in this permit as a way to begin to collect the data needed to determine the need for future stormwater effluent limits and determine whether implementing best management practices are achieving compliance with water quality standards. PSA is particularly supportive of the quarterly monitoring requirement, based on our experience with the Boatyard General Permit, which also requires quarterly monitoring.

PSA was disappointed to see that Ecology has not included the minimum monitoring requirements used in the EPA's Multi-Sector General Permit. Our section by section discussion is below.

PSA recommends that the results of visual inspections (both quarterly and the one dry season inspection) be submitted to Ecology like the discharge monitoring reports. This is an important compliance component of the permit and is used to determine SWPPP BMPs. PSA's experience with the Duwamish River SWPPPs is that very few facilities are conducting those inspections, likely because they have not been required to submit them. This will also help reduce time spent on public disclosure requests when PSA monitors permit compliance.

S4.A.2 Stormwater Sampling

It should be clearly stated here that benchmark values are not water quality standards.

PSA is not certain whether the permit requires a facility that has achieved consistent attainment, but has requested a modification for significant change in process, to begin stormwater sampling again once the new process has been implemented. If the permit does not cover this situation it should be modified to do so.

S4.A.3 Additional Metal Sampling

It is unclear why Ecology has significantly changed the monitoring requirements from the EPA's Multi-Sector General Permit. Why were iron, cadmium, and total suspended solids removed from this draft of the permit? PSA recommends that Ecology add back to the list of parameters with their corresponding benchmark values iron (1.0 mg/L), cadmium (15.9 mg/L) and total suspended solids (100 mg/L).

S4.B.1 Timber Product Industry, Paper and Allied Products

Why were COD, total suspended solids, arsenic, copper, and debris 1-inch in size or less removed? PSA recommends that Ecology add back the following parameters and benchmark values: COD (120.0 mg/L), total suspended solids (100 mg/L), total arsenic (168.54 mg/L), total recoverable copper (63.6 mg/L) and hardness (as Ca/CO3).

S4.B.3 Chemical and Allied Products, Food and Kindred Products

Why were ammonia, total suspended solids and COD removed? PSA recommends that Ecology add back into the permit the following parameters and benchmark values: ammonia (19mg/L), total suspended solids (100mg/L) and COD (120 mg/L).

S4.B.4 Primary Metals, Metals Mining, Automobile Salvage, Scrap Recycling, Metals Fabricating

Why were aluminum, iron, cadmium, total suspended solids and COD removed? PSA recommends that Ecology add back into the permit the following parameters and benchmark values: aluminum (750 ug/L), iron (1.0 mg/L), cadmium (15.9 ug/L), total suspended solids (100mg/L) and COD (120 mg/L).

S4.D Facilities Discharging to 303 (d) Listed Waterbodies or Subject to TMDL Determination

PSA recommends that the "current" 303 (d) list of parameters by waterbody be sampled by facilities discharging into these waterbodies.

S5 Reporting and Recordkeeping Requirements

PSA supports Ecology's effort to collect electronic submissions of discharge monitoring reports as long as the issue of providing a legal signature is resolved and this information is as readily available for public review as the current paper copies of DMRs. In addition, PSA supports Ecology's desire to make these DMRs available for public review on the Ecology web page. This will provide the public with significant opportunities to review permit compliance and reduce Ecology staff time in pulling permit files for public review.

S6 "No Exposure" Certificate

Ecology must make a determination for "no exposure" certificates. The permit currently allows Ecology to make a determination if it does not respond in writing with in 60 days of the submittal of a no exposure form. Again PSA fails to see how Ecology can accomplish its mission without actively making determinations about issues related to water quality.

S7 Compliance with Standards

PSA supports the requirement that permittees must comply with water quality standards, sediment management standards, ground water quality standards and human health-based criteria in the national Toxics Rule. This is a significant step forward from the 2000 permit, which stated that compliance with water quality standards was the ultimate goal.

S7.A

This section states that Ecology will apply a mixing zone where authorized in S3.E and that "compliance with surface water quality standards shall be determined after consideration of available dilution." It is not clear what available dilution is or how Ecology will determine compliance. There is no sampling of the mixing zone required and no calculation of dilution factors required prior to receiving a standard or expanded mixing zone. Given that this is a one-size fits all permit, there is also no relationship between the discharge from a facility and the size of the mixing zone allowed. How will Ecology enforce compliance with this permit?

PSA recommends that this section be clarified to detail how Ecology will use dilution to determine and enforce compliance with water quality standards.

S7.C

This section is illegal and PSA recommends that it be deleted. The Clean Water Act does not allow Ecology to excuse permit violations because a stormwater treatment system does not fully function during a storm that exceeds the water quality design storm. This is particularly critical since the design storm is only a 6-month, 24-hour storm event.

S9 Stormwater Pollution Prevention Plan (SWPPP) for Industrial Facilities

S9.A General Requirements

S9.A.3 Public Access

Again, PSA requests that this section be reworded to require Ecology to maintain a "current" copy of the SWPPPs for each industrial facility at the appropriate Regional Office. Current should be defined to include visual inspection reports and all modifications to the SWPPPs. It is PSA's intent to monitor facility compliance with this permit on a regular basis. We would like to avoid making public disclosure requests for watersheds we are ready to monitor.

S9.A.4 Modifications

This section contains additional "unless authorized by Ecology" language that, allows permit modifications to occur on an Ecology determined compliance schedule that is no subject to public

review. Compliance schedules and permit modifications should be subject to public review and comment or the "unless authorized" language should be deleted.

S9.A.5.b Applicability of current and Future Editions of the Stormwater Management Manual

This section allows existing permitted facilities that comply with water quality standards to use the 1992 version of the stormwater management manual as the basis of their BMPs. The problem with this, is that under the permit there is no way to determine compliance with water quality standards. The practical result is that no industrial permittee will have to comply with the BMPs in the current 2001 manual. The other problem is that the permittees are supposed to have implemented AKART before requesting a mixing zone. The 2001 Western Washington Stormwater Manual is considered AKART, but the ten-year-old 1992 manual is not. How can Ecology legally excuse permittees from implementing AKART?

PSA recommends that the permittees all be required to implement the BMPs from the current 2001 edition of the Stormwater Manual.

S.9.A.6 Other Pollution Control Plans

When permittees submit their SWPPPs to Ecology, any plans incorporated by reference should be submitted to Ecology as well, so both Ecology and the public have full access to the information used to create and modify the SWPPPs.

S.9.B SWPPP Contents and Requirements

The 1995 Industrial Stormwater General Permit had a requirement for the SWPPP to contain a certification by a responsible official that the facilities stormwater discharges had been investigated for the presence of non-stormwater discharges. Why has this requirement been deleted? This dry season inspection and certification seems like an important piece of information for the facility, Ecology and the public. Based on my review of the 29 SWPPPs submitted as a result of my request on the Duwamish River, few of these inspections have occurred.

S9.B.3.b and S9.B.5

The 2001 Western Washington Stormwater Manual should be referenced in both of these sections. It is unclear which version is required.

Thank you for this opportunity to provide comments. We request that you seriously consider the changes in the permit we have proposed.

Puget Sound Water Quality Action Team

Thank you for the opportunity to comment on the draft Industrial Stormwater General Permit dated March 27, 2002. Our comments are divided into "general comments" and "suggestions for improvement."

General comments

In general, the Action Team staff congratulate the department for its work in developing the draft permit. We believe the draft represents a significant improvement over the previous permit. We specifically support:

- The requirement for periodic monitoring for several parameters and additional monitoring for specific industries.
- Statements that discharges must not cause or contribute to excursions from state water quality standards.

- The requirement for discharges to 303(d) listed waterbodies to meet water quality standards for the parameter of concern at the point of discharge.
- The inclusion of monitoring protocols; we believe that they should help ensure quality assurance and control.
- The requirement for record keeping, development of a Stormwater Pollution Prevention Plan (SWPPP) and operation and maintenance.
- The requirement that permittees use the Stormwater Management Manual for Western Washington.
- The requirement that the SWPPP include specific operational and structural source control and treatment BMPs.

Suggestions for improvement

We suggest that the permit clearly state in S3E that Ecology shall approve the use of mixing zones for monitoring. This should not be a decision left entirely up to the permittee. There may be waterbodies or industries for which mixing zones are not suitable without jeopardizing the waters of the state.

If monitoring is suspended due to no exceedances for eight quarters (S4), we suggest that there be a requirement for periodic "check-in" samples to ensure that exceedances do not occur. Requiring no additional monitoring for the remainder of the permit could result in several years of contamination to a water body. Annual check-in sampling may be a reasonable time period.

We suggest that Ecology formally grant "no exposure" certificates to permittees, rather than it being an automatic designation unless Ecology responds in writing (S6). It is possible that a permittee that should be covered might "fall through the cracks," especially given the number of permittees. This could be done simply by a form letter.

We suggest that under Appendix #2 Definitions, Ecology clearly state that for industrial facilities in western Washington the applicable manual that must be used is the Stormwater Management Manual for Western Washington, August 2001. Currently the language in this section is unclear. It is much more clear in S9.

Thank you for the opportunity to comment on the draft permit.

ReSources for Sustainable Communities

I have reviewed the Industrial Stormwater General Permit (ISGP) and offer the following comments.

General Comments

During the workshop and hearing for this permit conducted in Mount Vernon, Ecology staff repeatedly stated that their agency did not have the resources to conduct inspections or enforcement actions. Staff repeatedly said that permit compliance would have to be a "good faith effort" on the part of permittees. This concerns us greatly. If Ecology does not have adequate resources to properly implement this aspect of the NPDES permitting authority, then it must turn this part of NPDES program back to the EPA for implementation.

There are a number of provisions in the ISGP that require Ecology oversight in order to be sure that the waters of the state are not being degraded. These include granting and monitoring of mixing zones, the development and approval of Stormwater Pollution Prevention Plans (SWPPPs), the discharge of pollutants to impaired waterbodies, and general compliance with the Clean Water Act and the State Water Quality Standards. As will be discussed further below, Ecology is abrogating its Clean Water act

authority if it cannot properly implement the requirements of the law regarding the above mentioned issues. Perhaps Ecology should simply not grant mixing zones, for example, until such a time as it has the resources necessary to adequately assign and monitor them.

Inconsistencies between fact sheet and permit

Page 15 of the Fact Sheet (Permit Status and Summary of Compliance with the Previous Permit) states that the permit does not require the permittee to conduct sampling and analysis. But Section S4, on page 19 of the permit states that all facilities will be required to monitor quarterly for a minimum of 8 quarters. We recognize that the permit is the regulatory document, but the Fact Sheet is an important companion and this inconsistency should be remedied.

S2 Coverage Requirements

S2B1 states that facilities currently covered under the existing ISGP will be covered under the new permit. There does not seem, however to be a requirement that these facilities provide Ecology with updated SWPPPs. Certainly, even existing facilities should still be required to update their SWPPPs periodically to ensure that new BMPs are taken into consideration and that the SWPPP follows new guidance from Ecology in the Stormwater Manual. Updating a SWPPP once every permit cycle seems barely adequate from a water quality perspective and not too onerous for the permittees.

S2B2 states "Those with pending applications are not required to submit a new application. However, additional information may be required…including the identification of receiving waterbody form …and a copy of the stormwater pollution prevention plan." It seems that all facilities should provide this information, so we suggest that the language be changed from "may be required" to "will be required."

S3D Discharge Discharges to Impaired Waterbodies

S3D2 states that facilities discharging to impaired waterbodies that fail to comply with effluent limits are placed on a compliance schedule. The schedule given on page 18 does not seem to have an end point. What happens in Year Five when the facility has reviewed all actions taken, the results of actions taken, and there are no more actions to take? Is the facility then deemed in compliance? Does Ecology decide to finally take enforcement action? Can Ecology even take an enforcement action, as it seems that this schedule would mean that enforcement is not allowed if the facility is working within the schedule? Is the facility allowed to violate water quality standards for 5 years whilst implementing BMPs and treatment? This aspect of the permit is vague, leaving compliance open-ended and undefined. Such language is not acceptable for any waterbody, but is especially unacceptable for 303d listed waterbodies.

S3E: Mixing Zones

The permit authorizes standard mixing zones as defined in the Water Quality Standards. We have a number of concerns about the legality of blanket granting of mixing zones.

The fact sheet very correctly states that mixing zone considerations are "very site-specific and difficult for stormwater discharges." The permit recognizes this difficulty but then grants blanket mixing zones that do not take into account any of the detailed information that Ecology states is necessary in making mixing zone determinations. If the size and efficacy of a mixing zone is determined by site-specific conditions, how can Ecology ensure that any one of these mixing zones does not have a "reasonable

potential to cause a loss of sensitive or important habitat, substantially interfere with the existing or characteristic uses of the waterbody, result in damage to the ecosystem, or adversely affect public heath" as is required in WAC 173-201A-100(4)?

S3E1 lists number of conditions for granting a mixing zone, but fails to state how such conditions will be met or verified. Whose responsibility will it be to ensure that the provisions of WAC 173-201A-100 are met? Certainly it would not be fair to the permittees nor would it be prudent from a scientific perspective, to require permittees to provide documentation that their mixing zone "does not have reasonable potential to result in a loss of sensitive or important habitat, interfere with the exiting characteristic of the water body, result in damage to the ecosystem" etc. Assuming that most permittees do not have the resources or expertise necessary to make such determinations, then will Ecology make such determinations? If so, then Ecology must review each application, conduct background research necessary and then provide specific approval on a case by case basis. This is the only way that the substantive requirements of the WAC can be met.

All permittees should apply for a mixing zone under this new permit, not just new facilities. Automatically granting mixing zones to existing permit holders flies in the face of the public notice provisions associated with NPDES permits. Any other permit holder, such as an oil refinery, would have a mixing zone authorization specifically written into its permit, thereby allowing the public the opportunity to comment on this provision. In this permit, however, there is no way for members of the public to know if a given facility already has a mixing zone or to make comment on the appropriateness of a mixing zone for the facility.

S4. Monitoring Requirements

S44 states that the storm event sampled must be preceeded by 24 hours of no precipitation. The sampling would be much more meaningful if there were a longer interval between the previous storm event and the one being sampled. We suggest 72 hours.

S4A Hardship Fee Reduction. This permit includes a provision allowing a modification of monitoring requirements for facilities that have received a hardship fee reduction. While we commend Ecology for trying to be fir to small businesses. We hope that this will not be at the cost to water quality. Specifically how will Ecology, which maintains that it does not have the resources to adequately implement the provisions of this permit, make the determination that stormwater from such a site will "pose no significant environmental risk?"

Visual Monitoring. We support the use of visual monitoring to augment water quality sampling. A well-informed and documented visual monitoring program can give Ecology a lot of information about the site and its stormwater management. We are concerned, however, about the lack of uniformity and documentation for the visual monitoring requirements in this permit. To ensure consistency between facilities and even from inspection to inspection within the same facility, visual monitoring should be documented on a common form, developed by Ecology. Given that many facilities do not have dedicated environmental compliance officers, Ecology must take the time to tell SWPPP responsible staff what to look for in a visual inspection. Simply stating that one should take note of "floating materials, suspended solids, oil and grease, visible sheen, discoloration, turbidity, odor, etc." is not adequate. Ecology should develop a visual monitoring report form that clearly calls out not only potential contaminants, but also documents BMPs are in place and functioning (swales in good shape, process chemicals under cover, etc). As well, such reports should include notation of recent weather. All visual monitoring events should require dated photo documentation.

Lastly, these monitoring reports should be filed with Ecology. This is especially important once the facility is no longer taking stormwater samples. The current requirement file the results of visual

monitoring with the SWPPP for the facility is laughable given that, at Ecology's admission, well over half the facilities covered by the last permit could not even locate their SWPPPs.

S4A2 Benchmark Values. Please explain the use of Benchmark Values in this permit. It appears that they are inconsistent with the state Water Quality Standards. For example, Section S4A3 give the benchmark values for Total Copper and Total Lead as 63.6 and 81.6 ug/L, respectively. Is this for total recoverable metals? The Water Quality Standards limits are expressed as the dissolved fraction for each. The calculation for total recoverable metals does not appear to be included in the permit. How is the public to know whether the Benchmark Values are equal to or less than the Water Quality Standards and whether compliance with the Water Quality Standards has been achieved if they are not expressed in like terms?

Turbidity is another concern. The Benchmark Value for turbidity is 25 NTU. However, the water quality standards limit turbidity to Class AA waters to 5 NTU over a background of 50, or an increase of no more than 10% if background is more than 50. In class B waters, turbidity is limited to 10 NTU. How does the state justify a blanket turbidity value, regardless of background values or class of receiving water? Clearly, in most instances attainment of the Benchmark Value for turbidity will result in a violation of water quality criteria.

S5: Reporting and Record Keeping. As is stated above, permittees should send their visual monitoring reports, along with photo documentation, to Ecology. This should be done similarly to the submittal of Discharge Monitoring Reports.

S6: No Exposure

S6D states that a no exposure certificate is automatically granted to all facilities that apply within 60 days of application unless Ecology denies the request in writing. This is not appropriate. A no exposure certification must be made by Ecology, based on detailed analysis of the site, including a site inspection by ecology staff. Then no exposure must be granted in writing. Simply allowing no exposure to anyone who submits an adequate form is no guarantee that water quality is being protected. Again, if Ecology does not have the resources to properly implement this provision, then there should be no certificates granted until the agency can find the resources.

S7 Compliance with Standards

S7C states that a violation due to a stormwater treatment system that does not properly function during a storm that exceeds its design criteria will not constitute a violation. This permit provision is illegal under the Clean Water Act, which requires effluent control adequate to ensure compliance with water quality standards. Ecology should act to ensure that facilities have adequate controls in place to ensure that water quality standards are not violated rather than excusing facilities ahead of time for violating standards.

S9. Stormwater Pollution Prevention Plans (SWPPPs)

It is clear from both the Fact Sheet and the permit that SWPPPs will play a major role in ensuring facility compliance with water quality laws. The Fact Sheet states that as of last year, only half of the facilities covered under this permit could even locate their SWPPP and even fewer had an up to date SWPPP that was fully implemented. Further, the Fact Sheet states that not more than 25% of the facilities could be considered to be in full compliance with permit BMP requirements. So, out of over 1200 facilities, more than 600 could not find their SWPPPs and fewer than 300 facilities were actually in compliance! This is, quite frankly, shocking.

Given this information, I was most interested to read the new SWPPP requirements in the modified permit. We find that facilities are not required to have Ecology review and approve their SWPPPs. Without required review and approval from Ecology, the SWPPPs, how will we remedy this situation? Ecology must review and have approval authority over SWPPPs to assure that they have been

completed and provide adequate controls for each site. SWPPPs should not simply be an exercise that Ecology requires facilities to engage in. They should be detailed documents with enforcement consequences. If Ecology does not have the resources to review and approve SWPPPs, then requiring them is next to meaningless.

Lastly, I would like to comment about what I perceive to be a lax attitude towards enforcement of the law from Ecology on this matter. At the public workshop and hearing I attended, Ecology staff referred to needing monitoring data in order to gain a better sense of the nature of stormwater and to assess whether stormwater is a problem. In fact, self-monitoring is an important aspect of the NPDES permitting program. The purpose of monitoring as detailed in the permitting program and throughout settlement negotiations that resulted in this permit, is to assess compliance with the law. To hear Ecology staff tell the regulated community that enforcement will most likely not happen was disheartening. We expect rigorous enforcement of this permit, which has great implications for water quality as it affects over 1,200 facilities throughout the state. If Ecology does not want to conduct such enforcement or does not have the resources to do so, then it should either raise permitting fees, seek help from the legislature, or turn the NPDES program back over to the EPA.

Thank you for the opportunity to comment on this permit.

Robin Sandell

In response the Washington State Department of Ecology (Ecology) public notice concerning issuance of the draft Industrial Storm Water General Permit the following comments are being submitted for Ecology's consideration. These comments are being submitted on behalf of clients located in the state of Washington that are current permit holders.

S1. Permit Coverage

S1.B.3 When is Coverage under the Industrial Storm Water General Permit Not Required (Page 5): "Industrial facilities which discharge all of their storm water to the ground and have no point source discharge to surface water or a municipal storm sewers unless determined to be a significant contributor of pollutants to groundwater."

Comment: If a facility is determined to be a significant contributor of pollutants to groundwater by Ecology, and is required to obtain permit coverage, the monitoring requirements should be very different than facilities discharging to surface water bodies. Also, the basis for the determination of which industries would require monitoring is not the same for facilities discharging to groundwater as for those that discharge directly to surface water bodies. Suggestion: The permit could require that these facilities perform the quarterly visual monitoring and the dry season inspections; however, analytical sampling should either 1) Not be required under these circumstances; or 2) The permit should be revised to include a monitoring program that better reflects discharges to ground.

S3. Discharge Limitations

S3.A Authorized Storm Water Discharges (page 12): "Beginning on the effective date of this permit and lasting through its expiration date, the permittee is authorized to discharge storm water to waters of the state."

Comment: The permit should contain an authorization for low risk non-storm water discharges, such as those expressly allowed in the Federal Multi-Sector General Permit (MSGP). The MSGP expressly allows the discharge of: Fire fighting activities; fire hydrant flushings; potable water including waterline flushings; uncontaminated air conditioning or compressor condensate; irrigation drainage; landscape watering provided all pesticides, herbicides, and fertilizer have been applied in accordance with

manufacturer's instructions; pavement wash waters where no detergents are used and no spills or leaks of toxic or hazardous materials have occurred (unless all spilled material has been removed); routine external building wash down which does not use detergents; uncontaminated ground water or spring water; foundation or footing drains where flows are not contaminated with process materials such as solvents; incidental windblown mist from cooling towers that collects on rooftops or adjacent portions of the facility, but NOT intentional discharges from the cooling tower (e.g., "piped" cooling tower blowdown or drains). The MSGP allows these low risk sources if they are included in the Site and Drainage Map and the SWPPP with any necessary BMPs.

This issue is partially addressed by Ecology in the *Washington State Department of Ecology Industrial Activities Fact Sheet* (page 12); however, it should be expressly addressed in the permit.

S3.B.1 Discharges Prohibited (page 13): "The discharge of process wastewater is not authorized. Process wastewater means any water which, during manufacturing, processing, operations, or maintenance, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, by product, or waste product. Storm water that commingles with process water becomes process water."

Comment: The permit should address discharges that are allowed, and have been allowed by Ecology in the past, and that currently are not required to obtain a separate NPDES wastewater discharge permit.

- The permit should allow for the discharge of vehicle/equipment wash waters treated and discharged from biofiltration systems designed and operated in accordance with the Ecology's *Vehicle and Equipment Washwater Discharges Best Management Practices Manual*.
- The permit should address discharges of deicing/anti-icing fluids at airports from dry weather and wet weather deicing. The permit should provide explicit guidance as to whether these discharges are allowed for facilities that are under the existing permit and those facilities that currently do not have permit coverage. If these discharges are not allowed, an extended capital BMP schedule should be included in the permit to allow for the considerable capital, design and construction timeframes that may be necessary to meet this requirement. In some cases it may take several years to determine the most cost effective solution, research the effectiveness of the solution, obtain capital to build the necessary BMPs and to construct the BMPs. The permit should also address who is responsible for implementation of these BMPs. Is the Airport Authority solely responsible, or a combination of the Airport Authority and the tenants, to meet this requirement?

S4. Monitoring Requirements

Airports (Co-Located Facilities)

Comments: The permit should include a detailed explanation of how the permitting requirements apply to tenants at co-located facilities such as airports. At these locations it is unclear which party is required to obtain the permit, develop and implement the Storm Water Pollution Prevention Plan (SWPPP) and implement the required monitoring at the outfalls to waters of the state. The tenants, in general, do not discharge directly to waters of the state. The tenants generally discharge to a storm sewer system operated by an agency such as an Airport Authority. In general, it is the agency's storm sewer system that discharges at what would be considered the "permitted" outfalls. Therefore, the permit should provide guidance to tenants and the agencies that operate the storm sewer systems, concerning who is responsible for:

- Obtaining permit coverage;
- Development of the SWPPP;
- Sampling in compliance with the permit at the outfalls that discharge to waters of the state; and

- If tenants are required to get their own permit, either by Ecology or the agency that operates the storm sewer system, then the permit should clarify:
  - Who is responsible for sampling at the outfalls to waters of the state;
  - Who is responsible for development of the SWPPP; and
  - Are tenants required to perform sampling on their leasehold? If so, at what point should the samples be taken, when many ramp areas are common use areas?

There is strong precedent and support for Ecology to revise the permit to reflect a coordinated airport-wide approach to permitting, SWPPP preparation and sampling program development at these facilities. It is both appropriate and essential at complex facilities, such as airports, to approach permitting in a comprehensive manner (i.e., through permitting, SWPPP development and sampling program development) that considers all of the industrial activities conducted at the facility together and not in a fragmented approach. A comprehensive approach that considers all of the industrial activities conducted at the facility **together** ensures that their combined impact to storm water discharging to waters of the state is properly monitored and the impact is minimized through the development of comprehensive, consistent BMPs.

- Comprehensive Sampling Program Development: Sampling at the point(s) where storm water discharges from the agency's storm sewer system to waters of the state is common practice at most major airports. These locations better represent the overall impact of the facility on surface waters and represent all industrial users at the facility. Sampling at the point(s) where storm water discharges from the agency's storm sewer system, through a comprehensive sampling program, is protective of surface and groundwater quality and will ensure that water quality violations do not occur. Sampling storm water at tenant leaseholds presents safety and security concerns, valid sampling locations that are not significantly impacted by other tenants are very difficult to identify, and these locations do not represent storm water quality at the point of discharge to waters of the state.

S4.A.3 Additional Metal Sampling (page 22): "If the value for total zinc exceeds the benchmark value for two consecutive quarters, beginning with the next sampling quarter the permittee shall include analysis for copper and lead….."

Comment: Storm water discharge monitoring at a major southwestern US airport has indicated no connection between elevated zinc levels and lead and copper issues. There is evidence that airplane tires do contribute to elevated zinc levels in storm water runoff. The discharge sampling at this airport did not indicate elevated lead and copper levels in airport runoff. Please provide the background information that supports standing for this requirement.

S4.B.2 Air Transportation (page 23): "Sample 4 times during the three month period of December, January and February when deicing activities are occurring."

Comment: The sampling period should be extended to "from the beginning of October to the end of April," which better reflects actual deicing periods at airports throughout Washington.

General Analytical Monitoring and Visual Monitoring Comments:

S3.D.1 (page 16): "New facilities that discharge to waters listed as impaired by the State under Section 303(d) of the Clean Water Act must comply with the State's water quality standards for the named pollutant(s) **at the point of discharge**."

S4. Paragraph 5 (page 20), "Each **distinct point of discharge offsite** must be sampled and analyzed separately …"

S4.A (page 20), "Beginning with the first quarter of the year 2003, all facilities must conduct quarterly monitoring of authorized **discharges of storm water to surface water.**"

S4.A.1 (page 21): "All **discrete outfalls** shall receive visual inspection."

S9.B.2 (page 35) "The SWPPP will include a monitoring plan. The plan must identify all the points of discharge to surface water or to a storm drain system."

Comment: Clarification should be included in the permit for facilities that discharge the majority of their storm water via sheet flow (i.e., no discrete outfall) and do not discharge directly to a surface water body (i.e., facility may discharge via sheet flow to adjacent vegetated fields; to a vegetated roadside ditch located miles from the nearest surface water body; etc.). The permit should include the opportunity for the permittee to submit an application to waive the storm water sampling requirements for those facilities that pose little risk of violating water quality standards due to their location, method of discharge, industrial activities performed on-site and BMPs currently in-place. Examples of facilities that pose little risk to violate water quality standards and should be eligible to waive sampling requirements would include:

- Small facilities that discharge storm water via sheet flow to surrounding vegetated undeveloped fields.
- Small facilities that conduct most, but not all, of their industrial activities inside (i.e., outside storage would include a dumpster and vehicle storage prior to maintenance, a covered fuel island with containment). These facilities would almost comply with the "no exposure" certification requirements, however, may want permit coverage due to "minor" industrial activities being conducted outside.
- The facility is a considerable distance from a surface water body and has no direct link to that surface water body.
- All of the discharges are to ground via infiltration and/or dry wells.

Comment: The permit should be revised to include clarification for facilities that discharge the majority of their storm water via sheet flow (i.e., no discrete outfall) and do not discharge directly to a surface water body concerning how to determine a valid location to collect samples to comply with the visual monitoring requirement (S4.1) and the storm water sampling requirement (S4.2). If there are no "discrete outfalls" because the facility discharges via sheet flow, where does Ecology want the permittee to obtain the samples to comply with the permit requirements? The permit should include clarification for the permittee to understand how to locate valid sampling points.

Comment: The permit should allow for alternative sampling points, up gradient of discharge areas, to take into consideration the impact from contaminated run-on from adjacent properties and hazardous conditions (i.e., storm sewer system outfalls that are underground in permit required confined spaces).

S4.A.1 (page 21): "All **discrete outfalls** shall receive visual inspection. Inspection shall include observations for the presence of floating materials, suspended solids, oil and grease, visible sheen, discoloration, turbidity, odor, etc. in the storm water discharge(s)."

Comment: The permit should specify whether the visual inspection is a grab sample taken from storm water discharges. Observations for turbidity and suspended solids requires at least a 30 minute settling time, which would indicate that Ecology intends this to be a grab sample. If Ecology does intend the visual monitoring to require a grab sample then:

- The same sample location comments apply as described in the comments above (i.e., how do you locate a valid sampling point at facilities that do not have "**discrete outfalls**" and how do tenants at co-located facilities comply with this requirement).

- The permit should describe what requirements should be met to obtain a valid visual monitoring sample. Do the sampling instructions outlined in S4. Paragraphs 1 – 5 apply to the visual monitoring samples?

If Ecology does not intend the visual monitoring to require a grab sample then a better explanation of how the visual monitoring is to be accomplished should be included (i.e., the observation should be made by standing over the storm water as it discharges and visually observing the flow for the presence of floating materials, suspended solids, oil and grease, visible sheen, discoloration, turbidity, odor).

General Visual Monitoring Reporting Comments:

S4. First Paragraph (page 19): "The results of the visual monitoring will be kept with the storm water pollution prevention plan."

S4.A.1 Visual Monitoring (page 21): Reference the entire first two paragraphs.

G19. Signatory Requirements (pages 42, 43): "All applications, reports, or information submitted to Ecology shall be signed and certified."

Comment: The permit should clarify whether the permittee is required to write a report concerning the quarterly visual monitoring and dry season inspection and what information the reports are required to include. These clarifications should be included in this section (S4.A.1) of the permit and should include: 1) Whether the reports are to be submitted to Ecology or kept in the SWPPP; 2) The appropriate record retention requirements; and 3) Whether a certification signature is required in compliance with G19. Permit language is often difficult for the regulated community to understand when the reader must be expected to piece together clues from many sections of the permit to come up with this information. It would useful to have all of this information in one section (S4.1).

S4.D Facilities Discharging to 303(d) listed Waterbodies or Subject to TMDL Determination (page 25): "In addition to the requirements in S4.A above, beginning with the first quarter of the year 2003, all facilities that discharge to waters listed as impaired by the State under Section 303(d) of the Clean Water Act must conduct quarterly monitoring of authorized discharges of storm water **to surface water**."

Comment: The permit should include a clarification as to whether Ecology or the permittee makes the determination of whether or not the discharge is to surface waters listed as impaired by the State under Section 303(d) of the Clean Water Act.

- If Ecology makes this determination, the permit should specify the timeframe in which Ecology will notify the permittee if this additional sampling applies.
- If the permittee must make this determination, then the comments above describing issues with facilities that discharge via sheet flow and/or do not directly discharge to a surface water body apply. Permit clarification is necessary to describe how to make the determination of when a discharge would be considered to a "surface water listed as impaired by the State under Section 303(d) of the Clean Water Act".

S5 Reporting and Record Keeping Requirements

S5.B Records Retention (page 27): "The permittee shall retain records of all monitoring information for a minimum of three (3) years."

Comment: Please clarify how long other records such as training records, quarterly visual monitoring records, the dry inspection records, etc. should be maintained. Does the three year period refer to analytical monitoring records only? The permit should include a clarification on how to reconcile the

record retention requirements included in this permit with the five year record retention requirements included in General Condition 19 of the current permit (page 26).

S5.E Noncompliance Notification (page 28): "In the event the permittee is unable to comply with **any of the terms and conditions** of this permit due to any cause, the permittee shall: 2. Immediately notify the appropriate Ecology regional office of the failure to comply."

Comment: The permit should include a better explanation of when noncompliance notification is required. The current language would require the permittee to notify Ecology if a dumpster lid was found up during a quarterly visual monitoring inspection and the SWPPP BMPs indicated that dumpster lids would be kept down.

S9. Storm Water Pollution Prevention Plan (SWPPP) for Industrial Activities

S9. A General Requirements (page 32): "The responsible party as identified in General condition G20, Signatory Requirements, shall sign the SWPPP **and all of its modifications**."

Comment: Permit clarification should be added to indicate what is meant by "modifications." Is the permittee required to obtain a new SWPPP certification signature every time a minor modification is made (i.e., a phone number changes, the Site and Drainage Map is updated because the dumpster location changed, typos are identified and corrected, the dumpster lid was found up during a site inspection, the frequency of oil/water separator cleanout is increased, etc.) to the SWPPP? How should the permittee determine what type of modification should require a new certification signature? The permittee should not be required to obtain a new certification signature unless there are major changes to the SWPPP (i.e., a new detention pond is built, a new building is added to the facility, a new storm sewer is built for the facility, etc). A new certification signature would apply to SWPPP modifications resulting from: A change in design, construction, operation or maintenance which **has a significant effect on the potential for the discharge of pollutants to waters of the State** or if the SWPPP proves to be ineffective and there is a reasonable expectation for violating water quality standards.

S9.A.4 Modifications (page 32, 33): "The permittee shall provide a schedule in the SWPPP for implementation of **any** modification that are necessary because of a notice from Ecology, facility changes, or self-inspection."

Comment: Clarification should be added to the permit to indicate what types of modifications require a schedule to be developed and incorporated into the SWPPP. The current language would require a schedule to be developed if typos were found in the SWPPP during a quarterly visual monitoring inspection or if the Site and Drainage Map needed to be modified to show a new dumpster location. These minor issues should not require that a schedule be developed and incorporated into the SWPPP. A schedule would apply when modifications to the SWPPP are required because of: A change in design, construction, operation or maintenance which **has a significant effect on the potential for the discharge of pollutants to waters of the State** or if the SWPPP proves to be ineffective and there is a reasonable expectation for violating water quality standards.

General SWPPP Compliance Schedule Comments:

S1.E Coverage for Significant Contributors of Pollutants (page 7): "This permit may also cover any facility discharging storm water which Ecology determines to be a significant contributor of pollutants to waters of the state of Washington or may reasonably be expected to cause a violation of a water quality standard."

S2.C Is There a Compliance Schedule for Developing and Implementing the SWPPP? "No compliance schedule is authorized under this permit for developing and implementing the storm water pollution prevention plan …."

Comment: If a facility is notified that permit coverage is required due to a determination by Ecology that storm water discharging from the facility is a significant contributor of pollutants to waters of the state, there is no compliance schedule that provides facility management with information concerning when the notice of intent is due, how long they have to prepare a SWPPP, etc. This information was provided in Table: S1 Schedules of Compliance (page 8) of the current permit. The draft permit should be revised to include a compliance schedule for significant contributors at existing facilities.

S9.A.2 Ecology Request (Page 32): "Ecology may request a written copy or update of a previously submitted SWPPP."

S9.A.3 Public Access (page 32): "Ecology will maintain a copy of the SWPPP for each industrial facility at the appropriate Ecology regional office."

Comment: The permit sections referred to above seem to conflict; indicating (S9.A.2 and 3) that Ecology should have an updated copy of the SWPPP, yet there is no indication of a schedule for existing permittees to revise their SWPPPs or a due date to submit them to Ecology (S2.C). The SWPPP will require major modifications to incorporate the monitoring program, make adjustments to inspection programs, etc. in response to issuance of this new permit. Therefore, do existing permittees need to submit the modified SWPPP to Ecology? If so, the permit should be revised to include a schedule for existing permittees to modify and submit their SWPPPs to Ecology.

G18. Signatory Requirements

G18.A (page 43): The permit should be revised to reflect additional corporate authority options recognized by the Federal MSGP and many other states. The following language is suggested: "Manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25 million (in second-quarter 1980 dollars)."

G18.C. Changes in Authorization (page 43): Does the permittee need to submit a new authorization if the corporate authority, as defined by G18.A, changes? If the person who originally signed the authorization allowing an alternate person or position to sign documents submitted to Ecology changes, does the permittee need to submit a new authorization? If so, this language should be added to the permit. The current language would require a new authorization only if the delegated person or position changed.

Thank you very much for taking the time to consider these comments.

S. Armentrout

I have a comment regarding the definition of stormwater as defined by 40CFR Subpart 122.26(b)(14) which you have located in Appendix #1. To clarify what constitutes stormwater versus process water I think it would be helpful to place this definition further up in the permit, perhaps along with or near to the definition of process wastewater as found on page 13 of 58. (Is Appendix #1 referenced in the permit itself)? Could stormwater be better defined in Appendix #2 - Definitions, or at least the reference to 40 CFR Subpart 122.26(b)(14) be included here?

Thank you for the opportunity to comment.

Seattle Utilities

Thank you for the opportunity to comment on Ecology's Draft NPDES Industrial Stormwater General Permit dated March 27, 2002. The specific concerns addressed in this letter are related to the monitoring requirements as described in Special Condition S4 of the Draft Permit. Special Condition S4.D. requires that for facilities discharging to a 303(d) listed water body,

> "…Samples must be analyzed for the parameters named on the 303(d) [list] as causing impairment of the listed waters except for temperature which is not required and fecal coliform which is only required if there is a potential source from the industrial activity…."

Our concern is that a number of relatively small industrial facilities located in the Seattle area discharge into Elliott Bay, Lake Union, or the Duwamish Waterway and River. These water bodies are on the 303(d) list for a variety of chemical parameters detected in the water column and for contaminants located in the sediment.

Comment 1. As currently written in the draft permit, discharges from an NPDES permitted industrial facility must be sampled for all the chemicals on the 303(d) list, even those chemicals for which there are no sources at the site. We recommend that an exemption be allowed for other parameters similar to the one currently proposed for fecal coliform. Specifically, sampling for specific parameters named on the 303(d) list will only be required if there is a potential source from the industrial activity based, for example, on sampling results previously collected at the site or on data collected from other industrial sites conducting similar activities. To require sampling and analysis for all the parameters on the 303(d) list, even for limited period of time, would only produce an expensive database of little practical value.

Comment 2. At the workshop hosted by Ecology at the Northwest Regional Office on May 13, it was made clear by Ecology that the agency does not yet have a sampling protocol that can be used by industrial permittees that will meet the requirement of Special Condition S4.D for sediment-related 303(d) listed parameters. Developing such a protocol will take time, entailing the collective work of scientists, technical experts and involved stakeholders. There is a distinct possibility that a sampling protocol will not be completed in time for permittees to meet the proposed reporting requirements in the draft permit. Until such a protocol is available, we recommend that the requirement to sample industrial discharges be limited to water column-related parameters on the 303(d) listings, consistent with our comment in paragraph 1 above. Otherwise, a sampling requirement for sediment-listed parameters will be in place without a clear means to meet its intent, thereby risking potential violation of the permit through no fault of the permittee. Similar to paragraph 1 above, analysis for sediment related contaminants should be limited to those parameters for which there is a potential source at the industrial site.

The hard work invested in this draft permit by Ecology and other stakeholders is acknowledged and very much appreciated. However, we believe that it is critically important that Ecology issues an industrial stormwater permit with which one can comply with reasonable costs and that will not result in expenditures of scarce resources for little benefit in return. Doing otherwise would be irresponsible to our citizens, to the environment, and to the community at large.

Smith & Lowney, P.L.L.C.

Thank you and Ecology for the opportunity to comment on the draft Industrial Stormwater General Permit ("ISGP"). These comments include first a general discussion of overarching themes and then specific section by section comments.

At the outset, I commend you and Ecology for the substantial improvements over the previous 1995/2000 permit. The ISGP represents a major step forward in Ecology's regulation of industrial stormwater. I am particularly gratified to see that the ISGP includes substantial monitoring and reporting requirements that were promised by the first permit, ten years ago. I do think it is a shame, however, that it took an appeal of the entirely inadequate 1995 permit, reissued without substantial change in 2000, by five environmental organizations and myself to bring about this improvement. As you know, this appeal consumed a significant portion of Ecology's stormwater staff resources, as well as those of the environmental appellants and this law firm. State and federal law include numerous stringent requirements for NPDES permits regulating industrial stormwater and the 1995/2000 permit failed to meet many of them. While this draft ISGP does address several of the 1995/2000 permit

deficiencies in this respect, it too falls short of meeting applicable, and clear, legal requirements, as well as a number of measures that a diligent regulator would include to ensure that industrial stormwater is properly controlled and environmental impacts eliminated or minimized to the extent possible. These requirements and measures are discussed in these comments. I am determined to have Ecology issue a permit that meets all legal requirements. It would be unfortunate, to say the least, to have to repeat the inefficient and often frustrating experience of a permit appeal when the legal requirements are clear and I urge Ecology to make appropriate changes to the ISGP to avoid such a repeat. The choice is yours.

Overarching Themes

The ISGP, like NPDES permits generally, must require compliance with water quality standards and implementation of AKART. A permit cannot be considered to meet these requirements if conditions concerning water quality standards compliance and implementation of AKART are not enforceable as a practical matter. For the most part, the ISGP fails this test. While the ISGP does include commendable, strong language concerning compliance with standards, it also includes substantial loopholes, most notably including provisions for easy granting of mixing zones and the compliance schedule for discharges of pollutants of concern to 303(d)-listed waters, that would effectively make it impossible to enforce the standards compliance language. AKART implementation requirements also need revision. While the ISGP would require implementation of SWPPP BMPs, it includes no requirement that SWPPPs or inspection reports documenting compliance be submitted or otherwise available to the public. In addition, many permittees would not be required to update their SWPPPs to reflect the enhanced BMPs included in the updated Stormwater Management Manual for Western Washington. The deficiencies in the ISGP's conditions concerning AKART are particularly troubling as rates of compliance with BMP implementation have been quite low, as Ecology notes in the draft Fact Sheet:

> As of December 26, 2001, Ecology's Northwest Regional Office had 628 Permittees with coverage under the industrial stormwater general permit, the Southewst Regional Office had 514 Permittees, the Central Regional Office had 62 Permittees, and the Eastern Regional Office had 59 Permittees. Site visits are a very important part of assuring compliance with permit requirements. Ecology's regional offices are able to inspect between 15% to 30% of the industrial facilities each year. Facilities that are failing to comply often require multiple site visits. Facility inspections have revealed that many facilities with permit coverage are not in compliance with permit provisions. <u>The [SWPPP] is a critical permit requirement, identifying how stormwater at a facility will be managed to prevent stormwater pollution. However, it is estimated that as recently as August 2001, only about half of the facilities with permit coverage could locate their SWPPP during an Ecology inspection. Even fewer had a SWPPP that was kept up-to-date and fully implemented.</u> Best management practices (BMPs) are required by the permit to prevent stormwater pollution. <u>Based on site inspections, about 60% to 70% of the facilities could identify one or more BMPs (sic) that were maintained to manage stormwater, but no more than 25% would be considered in full compliance with permit BMP requirements. It is estimated that at least 10% to 15% of the permitted facilities have a stormwater discharge that is likely to be causing a measurable environmental problem.</u>

Draft Fact Sheet at 15-16 (1st)8 (underline added).

The problems with the standards compliance and AKART requirements in the draft ISGP seem to result in substantial part from purported resource constraints. For example, Ecology is not going to collect much information from permittees seeking mixing zones to make mixing zone determinations as required by state regulation because Ecology does not have the resources to make all of the anticipated

[8] The pagination of the draft Fact Sheet, as downloaded from Ecology's website, is fouled. Throughout these comments, "(1st)" refers to the first pages 15-16 in the draft Fact Sheet, "(2nd)" refers to the second time page numbers appear in the document, etc.

determinations; Ecology is not going to oversee facility improvements in the context of the compliance schedule for noncompliant discharges to 303(d) listed waters because it does not have enough staff; and Ecology is not going to require submission of updated SWPPPs or self-inspection (visual monitoring) reports because it cannot handle the paperwork. It is unacceptable to sacrifice environmental protection and attainment of regulatory requirements on the basis of resource constraints when alternatives exist. Here, the alternative to creating an unenforceable and loophole-ridden regulatory scheme is to shift the burden to permittees. Permittees are not legally entitled to mixing zones or compliance schedules or to the other breaks afforded them in the ISGP as a result of Ecology's purported resource constraints. In addition, I must point out that if the legislature refuses to adequately fund Ecology's NPDES program or stormwater management, Ecology, or others, can take steps to return full or partial regulatory authority to EPA.

To end this portion of these comments on a positive note, in addition to the long-overdue inclusion of requirements for discharge sampling, the ISGP is generally a well-written general permit. Especially in comparison to the mess that is the 1995/2000 permit, the requirements of the ISGP are understandable and fitted together.

Condition by condition comments

Condition S1

Comment 1. Footnote 1 to S1.C.6. refers to "restrictions for the protection of endangered species" as a type of "control plan" that results in possible exclusion from coverage for facilities to waters subject to such control plan. It is unclear what sort of "restrictions for the protection of endangered species" are contemplated here. Please clarify this and provide an example.

Comment 2. Footnote 1 to S1.C.6. also refers to possible exclusion from coverage for dischargers to waters covered by TMDLs. How does Ecology contemplate treating industrial stormwater discharges of pollutants of concern to waters covered by a TMDL when the TMDL does not address stormwater discharges?

Comment 3. S1.C.7. states that dischargers of pollutants of concern to 303(d) listed waters are excluded from coverage "unless the Permittee can meet the requirements of special condition S3.D." S3.D. requires point of discharge compliance with water quality criteria for pollutants of concern, except that existing facilities are allowed a "compliance schedule" if they cannot meet this limitation. Given this "compliance schedule" for existing discharge and the 40 C.F.R. § 122.4(i) prohibition on new discharges that will contribute to a violation of water quality standards, there appear to be no circumstances under which coverage would be prohibited by S1.C.7. Please explain what this condition contributes to the permit or under what circumstances it would operate to preclude coverage.

Condition S2

Comment 4. S2.B.3.b. says that facilities that had coverage but lost it due to their own action or inaction are to be considered new facilities and must meet the requirements of S2.B.3.c. This is good, as these facilities should be required to have SWPPPs fully implemented without any compliance schedule. Please clarify that this provision includes facilities that are "existing" but which only started operations after November 18, 1995.

Comment 5. S2.B.4.c. requires permittees to submit updated SWPPPs with an application for modified coverage. This is a good provision and should allow Ecology and the public to ensure SWPPP adequacy for these facilities. However, the ISGP should require all permittees to submit current SWPPPs to Ecology upon Ecology's request or request from the public, with appropriate provisions to ensure that updated SWPPPs are not requested at unduly short time intervals. It is essential that the

public and Ecology be allowed access to SWPPPs to monitor and ensure compliance, especially since the only documentation of self inspections (visual monitoring) is included in SWPPPs.

Comment 6. S2.B.5. implies that a standard, as opposed to an expanded, mixing zone requested with a "modification of coverage" application becomes effective automatically upon expiration of the public notice period. (S2.B.5.c. requires Ecology approval only for expanded mixing zones.) Please clarify whether this interpretation is correct. If it is, this condition should be changed to require Ecology approval of a standard mixing zone before it can come into effect. Please explain how this condition comports with WAC 173-201A-100, which requires Ecology to make various determinations before authorizing a mixing zone.

Comment 7. S2.C. has four subconditions setting forth compliance schedule requirements conditioned by the language "unless otherwise authorized by Ecology in writing." While it is good that the "otherwise authorization" must be in writing, this language is problematical. An NPDES permit is to establish permit conditions, not to make Ecology's exercise of its enforcement discretion an automatic modification of permit conditions. Inclusion of this language in these subconditions effectively means that Ecology can modify the substantive requirements of the permit by writing a letter to a permittee. A major permit modification, such as a change to a compliance schedule, requires public notice and opportunity to appeal. 40 C.F.R. §§ 122.62(a)(4) and 124.5(c). Please explain how the "otherwise authorized" language does not subvert these federal regulatory requirements. Ecology can always exercise its enforcement discretion by issuing an order or otherwise. It should not set up permit conditions that effectively modify the permit when enforcement discretion is exercised. It is also inappropriate, and unfair to the commenting public, to have these compliance schedules really be whatever Ecology says they are later – no one can comment meaningfully on these provisions or determine the adequacy of the compliance schedules in this circumstance. This language should be removed.

Comment 8. While the contents of the public notice required by S2.D. are adequate, the means of notice – publication in a newspaper of general circulation within the county in which the discharge is proposed – is not adequate. Federal regulations require that notice of permitting activity be provided to a list of interested persons. 40 C.F.R. § 124.10(c)(1)(ix). Please explain how the ISGP meets this regulatory requirement. This condition should be changed to require the permittee to mail notice to those on a list of interested persons. As written, the condition does not include methods of public notice reasonably calculated to give actual notice of the action in question to the persons potentially affected by it. 40 C.F.R. § 124.10(c)(4).

Comment 9. S2.E.1. also implies that coverage under the permit with a standard mixing zone does not require notification from or a determination by Ecology. See comment no. 6 above. This condition should be changed to clarify that no mixing zone is effective until Ecology makes a written determination.

Comment 10. The S2.F. requirement that permittees comply with local government regulations and meet the more stringent of permit or local jurisdictional requirements is excellent. This is an important step in integrating multi-jurisdictional stormwater regulation.

Condition S3

Comment 11. In S3.D.1., what does it mean that all new discharges "must be in compliance with any applicable TMDL determination" where the TMDL does not explicitly address stormwater and the new discharge is of a pollutant of concern? How does this meet the prohibition on new discharges that would contribute to a violation of water quality standards in 40 C.F.R. § 122.4(i)?

Comment 12. The language that requires compliance at the point of discharge in S3.D.1. and 2. is excellent. However, the "compliance schedule" in S3.D.2. is illegal and must be removed or modified. Under S3.D.2., the requirement to meet water quality standards at the point of discharge is rendered

unenforceable and effectively meaningless because the "compliance schedule" "immediately becomes applicable" when a permittee "fails to comply" with this effluent limitation. The Clean Water Act requires industrial stormwater discharges to comply "strictly" with water quality standards regardless of technological limitations. Defenders of Wildlife v. Browner, 191 F.3d 1159, 1164-65 (9th Cir. 1999). The "compliance schedule" is really a noncompliance schedule – it has no endpoint when actual compliance with standards is required, it requires no oversight by or reporting to Ecology, and it could be interpreted to restart every time that a permittee detects a violation of water quality criteria for a pollutant of concern at the point of discharge.

The Clean Water Act explicitly provides that permits for industrial stormwater discharges "shall provide for compliance as expeditiously as practicable, but in no event later than 3 years after the date of issuance of such permit." 33 U.S.C. § 1342(p)(4)(A); see also 40 C.F.R. § 122.42(d). The "compliance" referred to here is the strict compliance with water quality standards required by section 402(p)(3)(A). 33 U.S.C. § 1342(p)(3)(A). 33 U.S.C. § 1342(p)(3)(A) is also discussing initial permits – thus, the three-year limit should be counted from the date that the discharger was first covered by an Ecology industrial stormwater permit, which could be as early as 1992. See also, 40 C.F.R. § 122.42(d).

A legitimate compliance schedule leads to compliance with the statute and regulations. 40 C.F.R. § 122.47(a) and (a)(1); WAC 173-201A-160(4)(a). The S3.D.2. "compliance schedule" never requires actual compliance with water quality standards.

At a minimum, a compliance schedule in an industrial stormwater permit must require notification to the permitting authority of compliance or noncompliance with each interim date not later than 14 days after such date. 40 C.F.R. § 122.47(a)(4); see also, WAC 173-226-180(4). The ISGP "compliance schedule" includes no such notification.

Washington's regulation on water quality standards, in a section directly applicable to industrial stormwater, provides that "[i]f a discharger is applying all best management practices appropriate or required by the department and a violation of water quality criteria occurs, the discharger shall modify existing practices or apply further water pollution control measures, selected or approved by the department, to achieve compliance with water quality criteria." WAC 173-201A-160(3)(b) (emphasis added). The S3.D.2. "compliance schedule" contemplates no Ecology involvement.

Please explain how the S3.D.2. "compliance schedule" satisfies the statutory and regulatory requirements identified in this comment. The "compliance schedule" should be either removed from the ISGP altogether or S3.D.2. should be changed to indicate that implementation of the tasks required by the compliance schedule does not relieve the permittee of the underlying violation of the water quality standards at the point of discharge.

Comment 13. The S3.E. provision regarding mixing zones would also substantially subvert the Clean Water Act mandate for the ISGP to require compliance with water quality standards. It is foreseeable that the vast majority of permittees would seek and obtain mixing zones under the ISGP, no matter whether regulatory restrictions on mixing zones are met. As a result, it would be extremely difficult to determine whether any permittee is violating the permit prohibition on discharges that cause or contribute to violations of water quality standards. Enforcement of the standards compliance language would be impossible in most cases.

Ecology's mixing zone regulation, WAC 173-201A-100, requires Ecology to make determinations before a mixing zone can be granted. These include that the "supporting information clearly indicates" that the mixing zone "would not have a reasonable potential to cause a loss of sensitive or important habitat, substantially interfere with the existing or characteristic uses of the water body, result in damage to the ecosystem, or adversely affect public health." WAC 173-201A-100(4). Ecology must "consider critical discharge conditions" in making its mixing zone determinations. WAC 173-201A-100(3). Dischargers must be "required to apply AKART" before a mixing zone can be authorized. WAC 173-

201A-100(2). To depart from maximum size and overlap restrictions on mixing zones, as the standard mixing zones in the ISGP do, Ecology must make further determinations based on a clear demonstration by the discharger. WAC 173-201A-100(10)(b). It is plain, on the basis of the inadequate information required by the "Mixing Zone Request" form and the provision for approval by default of standard mixing zone requests (see comments nos. 6 and 9 above), that Ecology does not contemplate making these determinations before authorizing standard mixing zones.

The "Mixing Zone Request" form requires only identification of the receiving waters and a certification that the permittee has implemented AKART and is "managing stormwater discharges to protect the beneficial uses of the receiving water." Draft Fact Sheet, Appendix E (p. 39 (2nd)). This form should be modified to require submission of all information necessary to allow Ecology to make the determinations required by the mixing zone regulation.

Please explain how Ecology's administration of requests for standard mixing zones will satisfy the requirements of WAC 173-201A-100. Permittees do not have any "right" to mixing zones. If Ecology cannot muster the resources to make proper mixing zone determinations under the ISGP, then no mixing zones should be allowed.

Comment 14. S3.E. implies that there would be no public notice nor opportunity for comment or appeal for existing facilities because they would not be required to submit an application for coverage to be "eligible" for the standard mixing zone. Since these permittees do not have to submit applications for coverage or, under the requirements of this condition, an application for modification of coverage, public notice and participation on this crucial aspect of a permittee's coverage would be avoided. This is illegal and unacceptable. Federal regulations require public notice for permit issuance and modification actions that include the draft permit conditions, of which any mixing zone authorization is an essential part. 40 C.F.R. § 124.10(d)(iv). The ISGP should be changed to require compliance with public notice procedures for any application for a mixing zone.

Comment 15. The S3.E.1. statement that " [a] mixing zone is only applicable when" items a. through e. are met is unclear. Please clarify the meaning of this statement. Does it mean that there is no longer a mixing zone after, for example, a permittee fails to apply " [a]ll appropriate best management practices established for stormwater pollutant control" at any time after being awarded a mixing zone? In this example, would the permittee need to reapply for a mixing zone to have it reinstated after the permittee is found to have failed to apply all appropriate BMPs? In what contexts does Ecology anticipate making the determination mentioned in S3.E.1.d.?

Condition S4.

Comment 16. 40 C.F.R. § 122.44(i)(4) specifically addresses monitoring and recordkeeping requirements for industrial stormwater permits. Among these are requirements that the permittee make specific findings from inspections concerning the adequacy and implementation of the SWPPP, that the records of inspections be maintained for three years and certify that the permittee is in compliance with the SWPPP and identify any incidents of noncompliance, and that the inspection reports and certification satisfy the 40 C.F.R. § 122.22 signatory requirements. 40 C.F.R. § 122.44(i)((4)(i) – (iii). Please explain how the ISGP satisfies these requirements if you contend that it does. Otherwise, the ISGP should be changed to include satisfactory requirements for inspections (visual monitoring) that set forth the details of the records to be kept.

Comment 17. The ISGP should require that inspection reports be submitted to Ecology on a regular basis. Given the low rates of compliance with SWPPP and BMP requirements documented in the draft Fact Sheet (p. 15-16 (1st)), submission of these reports of inspections would be an excellent way to improve compliance rates and detect noncompliance.

Comment 18. S4.2. appears to be missing the word "before" ("which must be sampled [before] stormwater from the coal pile commingles …").

Comment 19. S4.A. requires sampling to begin only in the first quarter of 2003. Sampling should begin in the fourth quarter of 2002.

Comment 20. S4.A. allows sample analysis by other than specified methods. It should therefore clarify that sampling and analysis procedures must be representative of the quality and nature of the discharge.

Comment 21. The ISGP and Fact Sheet should include unequivocal statements that attainment of benchmark values does not necessarily equal compliance with water quality standards.

Comment 22. Section 308(a) of the Clean Water Act mandates that NPDES permits include monitoring requirements sufficient to determine whether effluent limitations are being violated. 33 U.S.C. § 1318(a). How would the monitoring required by the ISGP allow a determination as to whether permitted discharges are causing or contributing to violations of water quality standards, especially when mixing zones are authorized?

Comment 23. S4.B.2. should specify that air transportation group monitoring should start in December 2002.

Comment 24. S4.D. requires monitoring "as required by the TMDL" where there is one. What if the TMDL does not address stormwater? Perhaps the language should be changed to: "Where the TMDL determination sets load allocations for new discharges or limits pollutant concentrations in the discharge, the Permittee must conduct monitoring for the named pollutant(s) and such monitoring shall be consistent with TMDL requirements, if any."

Condition S5.

Comment 25. Electronic submission of monitoring information must meet federal regulatory signatory requirements.

Comment 26. S5.D. states that additional results of monitoring beyond that required by the permit must be included in DMRs only if done "using test procedures specified by Condition S4." S4.A. allows use of test methods "equivalent or superior" to those identified. Please clarify that results of additional monitoring derived from "equivalent or superior" test methods must be included in DMRs.

Comment 27. S5.E.3. includes the objectionable "unless otherwise authorized by Ecology" language. See comment no. 7. At a minimum, this subcondition should specify that such "other authorization" must be in writing.

Condition S6.

Comment 28. Electronic submission of the "no exposure" form must meet federal regulatory signatory requirements.

Comment 29. To address runoff that contacts contaminated ground under covered areas, but not necessarily materials or machines, S6.C.1. should be changed to state: "All areas where industrial materials and/or activities occur must be protected by a storm resistant shelter to prevent exposure to rain, snow, snowmelt and/or runoff."

Comment 30. S6.D. provides for default granting of "no exposure" status sixty days after submission of a form. No "no exposure" status should be allowed until Ecology makes a written determination that such status is warranted. EPA regulations contemplate that a permitting agency must make a determination before "no exposure" status is allowed.

Condition S7.

Comment 31. The statement in S7.A. that "[c]ompliance with surface water quality standards shall be determined after consideration of available dilution" needs further explanation. How, exactly, is this compliance to be determined? What does "consideration of available dilution" entail? Unless Ecology

can answer these questions, it cannot be said that the ISGP meaningfully requires compliance with water quality standards because such compliance could not be determined and would be unenforceable as a practical matter.

Comment 32. In addition to numerical water quality criteria for various pollutant parameters, Washington's water quality standards include descriptions of characteristic uses (e.g., water supply; fish migration, rearing, spawning, and harvesting; wildlife habitat, recreation) and protection of aesthetic values (" [a]esthetic values shall not be impaired by the presence of materials or their effects, excluding those of natural origin, which offend the senses of sight, smell, tough, or taste"). WAC 173-201A-030. Please explain whether "available dilution" would be considered in determining compliance with water quality standards besides numerical water quality criteria where a mixing zone is authorized under S7.A. If so, please explain how "available dilution" would be considered in this respect.

Comment 33. S7.C. provides that when a stormwater treatment system does not "fully function during a storm that exceeds the water quality design storm" there is no permit violation. This is flatly illegal. The Clean Water Act imposes on an NPDES permitting agency "a specific obligation to require that level of effluent control which is needed to implement existing water quality standards without regard to the limits of practicability." *Defenders of Wildlife*, 191 F.3d at 1163. Ecology cannot excuse discharges that cause or contribute to violations of water quality standards when a design storm is exceeded. This is a particularly egregious condition given that the design storm is a mere 6 month, 24 hour storm event. Fact Sheet at 35 (1st). This condition should be removed from the ISGP, or at least moved to the "operation and maintenance" section, S8., where it can be specified to refer only to excusing compliance with technology-based limitations.

Condition S9.

Comment 34. S9.A.4. includes the objectionable "unless otherwise authorized by Ecology" language. See comment no. 7 above.

Comment 35. S9.A.5.b. appears to allow "[e]xisting permitted facilities that comply with standards" to forgo modifying their SWPPPs to reflect changes and updates to BMPs from the ten year old Stormwater Management Manual for Puget Sound to the new Stormwater Management Manual for Western Washington. Ecology must require implementation of AKART through the ISGP. RCW 90.48.010, .520, 90.52.040, and 90.54.020(3)(b); see also, WAC 173-226-070(1). The upgraded Western Washington Manual currently represents AKART across the state and the expected Eastern Washington Manual will represent AKART for Eastern Washington once it is developed. Please explain how the ISGP requires implementation of AKART for all permittees when it does not require updating of SWPPPs to incorporate new or enhanced BMPs identified in the new manuals. The ISGP should be changed to mandate that all permittees implement AKART by modifying their SWPPPs to meet the standards set by the new manuals.

Comment 36. S9.A.6. should require applicable portions of other plans incorporated by reference into SWPPPs to be physically appended to SWPPPs when SWPPPs are submitted to Ecology.

Comment 37. The "check list for visual monitoring" in S9.B.2.b. needs definition. See comment no. 16.

Comment 38. S9.B.3.a.vi. directs that "[t]here will be documentation of visual monitoring reporting and recordkeeping procedures and schedules as required in Special Condition S5. of this permit." This sentence is unclear. In addition, S5. does not say anything about visual monitoring. See comments nos. 16 and 17.

Thank you again for your work on the ISGP and for this opportunity to comment. I look forward to your responses and, hopefully, improvements to the ISGP before finalization.

Snohomish County Public Works

Comments from Surface Water Management Division

Section S3D states that "permittees must be in compliance with any applicable Total Maximum Daily Load (TMDL) determination." This language and similar language in sections that follow should be removed. For TMDL plans that have already been developed, it is an inappropriately vague statement. Specific requirements contained in existing Detailed Implementation Plans (DIPs) developed pursuant to TMDLs, if they are to become NPDES permit requirements, should be listed in the permit, so that permittees can easily determine what the requirements, and whether to appeal the permit on the basis of these proposed conditions. Recommendations from DIPs produced after issuance of the permit can become permit conditions only through a permit modification process as set forth in Chapter 173-226-230 WAC. This has already been agreed upon in negotiations with Ecology about the NPDES municipal permit.

Comments from Solid Waste Management Division

Comment 1. Monitoring / Sampling The parameters specified to obtain valid, qualifying quarterly grab samples for analysis will be difficult and costly to meet in terms of manpower. This is particularly true for the requirement to obtain samples in the third quarter when very few qualifying storms may occur.

We have three facilities covered under Industrial Permits: the closed Cathcart Landfill Site near Snohomish with multiple (nine) sampling locations, the Southwest Transfer Station in Mountlake Terrace (two sampling locations), and the Everett Transfer Station in Everett (one sampling location). We are constructing a new Station at Paine Field in south Everett, which will require coverage when it opens in mid-2003 (one sampling location).

The six staff responsible for monitoring / sampling activities are based at our Cathcart Site. All six will be required to simultaneously cover the different sites and sampling locations. The Everett station is 20 minutes distant, Southwest, 35 minutes and Paine Field, 30 minutes in good traffic situations, which rarely occur.

Concurrent dispatching of personnel from Cathcart when a storm event starts, coupled with travel time, will likely result in missing the 1-hour window for sampling at some locations. Further, some or all of these staff may be in the field with other tasks. In addition, local weather patterns are such that a storm event may start at a distant facility but not reach the Cathcart site for a long period of time. Finally, it is not practical to keep staff in "standby" ready to make a sampling run based on weather forecasts, nor is it practical to pre-position staff or adjust schedules to ensure enough coverage. During the last and first quarter this is not such a major concern, as there are multiple storm events with which to work.

Comment 2. Monitoring / Sampling Storm drainage features may preclude obtaining a sample in the first hour.

The logical sampling point at the property boundary for many installations is likely at the end of a "train" of conveyances and detention and treatment BMP's. Depending on the size of the BMP's and the severity of the start of the storm, flow may not be present within the first hour. This is particularly true given the requirement for no discharge for 24 hours prior to the storm event. In the drier months, the initial runoff may be soaked up by swales, or need to overcome low levels in detention facilities before having a discharge that can be sampled.

Comment 3. Monitoring / Sampling Some sites may not be able to attain a condition of "no discharge for 24 hours" because of natural seeps or springs that discharge water into the storm drainage system.

It will be difficult to obtain a representative sample of the "first flush" runoff for these specific sites.

Stormwater Management, Inc.

We at Stormwater Management, Inc. applaud the work Ecology has done to revise the Industrial Stormwater General Permit. In general, we believe the permit is thorough and clear and will improve environmental performance of permitted industrial facilities in the state. We have prepared several suggestions or comments on the document language. We believe these suggestions will further improve the State's industrial stormwater regulatory program.

We have used italics to indicate text included in the draft permit, underscore italics for new text we suggest, and strike-through italics for text we suggest be deleted from the draft permit language.

Comment 1. Special Condition S2.C.2.b. (page 11 of 58)

> "Unless otherwise authorized by Ecology in writing, implementation of non-capital best management practices (BMPs) must be completed within 90 days of receiving coverage. BMPs that require a capital investment must be implemented within nine (9) months of receiving coverage unless otherwise authorized by Ecology in writing."

We suggest Ecology stipulate a maximum acceptable implementation time frame for BMPs that require a capital investment that fit the 'otherwise authorized by Ecology' scenario. We suggest Ecology stipulate an implementation period that does not exceed three (3) years for all BMPs that require a capital investment.

We suggest the following revision to Special Condition S2.C.2.b.

> "Unless otherwise authorized by Ecology in writing, implementation of non-capital best management practices (BMPs) must be completed within 90 days of receiving coverage. BMPs that require a capital investment must be implemented within nine (9) months of receiving coverage unless otherwise authorized by Ecology in writing. In any case, BMPs that require a capital investment must be implemented within three (3) years of receiving coverage."

Comment 2. Special Condition S3.F.1. (page 19 of 58)

> "1. Petroleum products as identified by an oil sheen or"

We suggest Ecology use the word 'oil' instead of petroleum and that synthetic and processed oil be included in the condition. Non-petroleum and synthetic oils and lubricants will leave a visible sheen on the water surface and should also be prohibited.

We suggest the following revision to Special Condition S3.F.1.

> "1. ~~Petroleum~~ Synthetic, natural or processed oil or oil-containing products as identified by an oil sheen or"

Comment 3. Special Condition S4.1. (page 20 of 58)

> "1. All samples will be grab samples taken within the first hour of discharge… "

This statement allows significant latitude to Permittees. Water quality of a grab sample taken during the first hour of discharge can be highly variable and influenced by the person collecting dependent on when during the hour that the sample is collected. A better sampling strategy is to use time-proportional, or better yet, flow-proportional sampling during the hour long period. Furthermore, the use of automated sampling equipment would increase the chances of capturing the first flush pollutant loading interval. Our experience has been that installing and using automated sampling equipment over the long run reduces the uncertainty associated with sampling and lowers the overall monitoring costs.

Comment 4. Special Condition S4.2. (page 20 of 58)

> "2 The storm event sampled must be at least 0.1 inches of rain in a 24-Hour period… "

The rainfall depth required should be stated as a specific range, from at least 0.1 inches of rain to the 24-hour design storm rainfall depth in the geographic area applicable to the Permittee.

Comment 5. Special Condition S4.A.2 Stormwater Sampling (page 21 of 58)

> "…The permittee may suspend stormwater sampling and analysis for turbidity, pH, zinc, and petroleum based on consistent attainment of benchmark values. Consistent attainment is defined as eight consecutive quarters (any quarter with no stormwater discharge is not counted) where the reported value for all four parameters are equal to or less than the benchmark values. For pH equal to or less than the benchmark values means that…"

We have two suggestions for this paragraph. First, it is unclear whether Ecology intends that a permittee must demonstrate consistent attainment of benchmark values for ALL four parameters in order to suspend stormwater sampling for those parameters, or that Ecology would allow a permittee to suspend sampling for individual parameters on the basis of consistent attainment of benchmark values for EACH parameter. Since the process to demonstrate consistent attainment of benchmarks is fairly rigorous (i.e. eight consecutive quarters of testing) we suggest Ecology allow permittees to demonstrate attainment on an individual parameter basis.

Second, the final sentence would be clearer if the phrase 'pH equal to or less than the benchmark values' is put into quotations.

Assuming Ecology concurs with both our comments above, we suggest the following revision to Special Condition S4.A.2.

> "…The permittee may suspend stormwater sampling and analysis for each of the individual parameters of turbidity, pH, zinc, and petroleum provided the permittee demonstrates ~~based on~~ consistent attainment of benchmark values for each respective individual parameter. Consistent attainment is defined as eight consecutive quarters (any quarter with no stormwater discharge is not counted) where the reported value for each of the ~~all~~ four parameters is~~are~~ equal to or less than the benchmark values. The phrase~~For~~ 'pH equal to or less than the benchmark values' means that…"

Comment 6. Special Condition S5.B. Records Retention (page 27 of 58)

> "The Permitee shall retain records of monitoring information for a minimum of three (3) years. Such information shall include all calibration and maintenance records and all original recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit. This period of retention shall be extended during the course of any unresolved litigation regarding the discharge of pollutants by the Permittee or when requested by Ecology."

The permit is not clear about requirements that pollution control or treatment structures must be maintained according to manufacturer recommendations nor does it stipulate the duration that inspection and maintenance records must be retained.

We suggest Special Condition S5.B. be revised as follows:

> "The Permittee shall retain records of monitoring information and maintenance of BMPs for a minimum of three (3) years. Such information shall include all calibration and maintenance records for monitoring instruments and BMPs, ~~and~~ all original recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit. This period of retention shall be extended during the course of any unresolved litigation regarding the discharge of pollutants by the

Permittee or when requested by Ecology. Inspection and maintenance protocols and frequencies for control and treatment BMPs must be performed according to manufacturer's or designer's recommendations."

Comment 7. Special Condition S6.C (page 28 of 58)

"C. The facility must meet the following minimum conditions:

1. All industrial materials and activities must be protected by a storm resistant shelter to prevent exposure to rain, snow, snowmelt and/or runoff...

4. Stormwater is not subject to significant levels of pollutants from impervious surfaces such as roofs."

As written, we believe these two conditions conflict with one another. We believe the intent of this paragraph is to exclude from "No Exposure" Certification facilities that have significant copper or galvanized roofing. Galvanized roofing used for corrosion protection has been shown to release potentially problematic concentrations of zinc to stormwater. Copper roofing releases copper to stormwater.

We suggest these sentences in Special Condition S6.C. be revised as follows:

"C. The facility must meet the following minimum conditions:

1. All industrial materials and activities must be protected by a storm resistant shelter to prevent exposure to rain, snow, snowmelt and/or runoff...

4. Impervious surfaces such as roofs must not release ~~Stormwater is not subject to~~ significant levels of pollutants to stormwater ~~from impervious surfaces such as roofs.~~ Galvanized or copper roofingare examples of impervious surfaces that releases significant levels of pollutants to stormwater. Facilities with a significant area of galvanized or copper roofing would not qualify for the "No Exposure" Certification."

Comment 8. Special Condition S9.A.2. (page 32 of 58)

"Ecology may request a written copy or update of a previously submitted stormwater pollution prevention plan (SWPPP.)"

The SWPPP is not required to be submitted. We propose the following wording substitution to this section:

"Ecology may request a written copy or update of a previously completed ~~submitted~~ stormwater pollution prevention plan (SWPPP.)"

Comment 9. Special Condition S9.A.4. (page 33 of 58)

"Unless otherwise authorized by Ecology in writing, noncapital BMPs shall be completed within two weeks of completing the plan and capital BMPs within six months."

This statement for capital BMP implementation timeframe is different than Special Condition S1.C.2.b. (see comment 1 above) that pertains to existing facilities not previously permitted. Special Condition S1.C.2.b stipulates an implementation period of 90 days (3 months) for non-capital BMPs and nine months for capital BMPs. Furthermore, the reference point for Special Condition S1.C.2.b is from time of coverage while for Special Condition S9.A.4 the time reference is from completing the plan. These differences are confusing. We suggest Ecology standardize these performance requirements to 90 days for non-capital BMPs and nine months for capital BMPs from time of coverage. Furthermore, we suggest Ecology stipulate an implementation period that does not exceed three (3) years from time of coverage for all BMPs that require a capital investment. Lengthening the compliance timeframe will also have the benefit of balancing Ecology's workload for new permit approvals.

We propose Special Condition S9.A.4 be revised as follows:

> "Unless otherwise authorized by Ecology in writing, noncapital BMPs shall be completed within 90 days of coverage ~~two weeks completing the plan~~ and capital BMPs within nine ~~six~~ months of coverage. In any case, BMPs that require a capital investment must be implemented within three (3) years of receiving coverage."

Comment 10. Special Condition S9.A.5. (page 33 of 58)

> "The Stormwater Management Manual for Western Washington is the current edition of the SWMM as of the effective date of this permit. The Stormwater Management Manual for Eastern Washington will become available sometime after the effective date of this permit. Facilities in Eastern Washington shall use the western Washington manual as applicable or other appropriate manuals until the eastern Washington edition is available."

Since the Western Washington Manual is not explicit as to which geographies in the state are covered (with the exception of the counties formerly covered under the Puget Sound Plan), it is suggested that Ecology stipulate explicitly the counties or geographies within the state that shall be governed by the Stormwater Management Manual for Western Washington. This paragraph should be explicit that Permittees in the included geographies must use the Western Washington Manual when selecting BMPs.

The final sentence of this paragraph offers great latitude to facilities not explicitly covered by the Western Washington Manual to seek out 'other appropriate' and possible much more lenient guidance manuals to reference. We suggest the Eastern Washington be explicitly defined and that facilities be required to use the Western Washington Manual guidance wherever possible. Only then should facilities be enabled to seek out other guidance. This would prevail until the Eastern Washington manual becomes available.

Comment 11. Special Condition S9.B.1. (page 34 of 58)

> "…The SWPPP must address each potential source of pollutants with best management practices that will eliminate or reduce the potential to contaminate stormwater."

We suggest this sentence be broadened to explicitly include control of pollutants that do contact storm water so as to prevent or reduce offsite migration of pollutants when pollution prevention alone is insufficient.

In many cases it is impractical to prevent contact of significant materials with stormwater, particularly for industries that utilize heavy equipment or vehicles to move process materials between buildings or storage areas. Although strong best management practices (BMPs) would dictate using totes or enclosed containers for process materials that could contact stormwater while being moved around the site, it is still probable that process materials will be exposed to storm water. For example hydraulic fluid, lubricating oil, brake dust and tire wear residue from mobile equipment; and dragout of process materials from buildings and manufacturing areas will contribute to stormwater pollution. Stormwater treatment should be employed for sites that have this type of activity and generate non-point source pollution.

Special Condition S9.B.1 does not explicitly cover expectations for control of incidental pollution of stormwater by Permittees. We believe to be protective of the environment as intended by the Clean Water Act, the role of rigorous controls or treatment should be emphasized to a greater extent in Washington's Industrial Stormwater General Permit.

We suggest the following revision to Special Condition S9.B.1.

> "…The SWPPP must address each potential source of pollutants with best management practices that will eliminate or reduce the potential to contaminate stormwater. Where BMPs

are ineffective or insufficient, the SWPPP must address stormwater controls and treatment that will eliminate or reduce the mass of pollutants discharged in stormwater."

Comment 12. Special Condition S9.B.1.c. (page 35 of 58)

> "c. **Industrial Activities:** The inventory of industrial activities will identify all areas associated with industrial activities…which have been or may potentially be sources of significant amounts of pollutants, including the following:"

We suggest that Ecology include galvanized or copper roofing in the inventory of industrial activities because of the potential to generate zinc in stormwater runoff.

We suggest adding to Special Condition S9.B.1.c:

> "(viii) Galvanized or copper roofing

Comment 13. Special Condition S9.B.2. (page 35 of 58)

> "2**. Monitoring Plan**…The discussion must include an estimate of the volume of discharge from each discharge point"

We believe the word 'volume' should be replaced with the phrase 'range of flow rates' since Permittees will be required to visually estimate the value.

We suggest revising Special Condition S9.B.2:

> "2. **Monitoring Plan**…The discussion must include an estimate of the range of flow rates ~~volume of~~ discharged from each discharge point"

Comment 14. Special Condition S9.B.3.a.iii) (page 36 of 58)

> "iii) Preventative Maintenance:…The SWPPP will include the schedule/frequency for completing each maintenance task."

The permit is not clear about maintenance expectations for pollution control or treatment structures. As a quality assurance measure, we suggest Permittees be required to maintain equipment according to manufacturers recommendations.

We suggest Special Condition S9.B.3.a.iii) be revised as follows:

> "iii) Preventative Maintenance:…The SWPPP will include the schedule/frequency for completing each maintenance task. Inspection and maintenance protocols and frequencies for control and treatment BMPs must be performed according to manufacturer's or designer's recommendations."

Comment 15. Special Condition S9.B.3.c (page 37 of 58)

> "c. **Treatment BMPs**: Treatment BMPs are required when operational and source control BMPs are not adequate to reduce pollutants below a significant amount and maintain compliance with water quality standards."

The phrase 'below a significant amount' is qualitative and will be difficult for Permittees to interpret. We suggest this portion of the sentence be struck to make the determination more quantitative.

We suggest Special Condition S9.B.3.c be revised as follows:

> "c. **Treatment BMPs**: Treatment BMPs are required when operational and source control BMPs are not adequate to ~~reduce pollutants below a significant amount and~~ maintain compliance with water quality standards."

Comment 16. General Conditions G2. (page 39 of 58)

> "The Permittee shall at all times properly operate and maintain all facilities and systems of collection, treatment, and control (and related appurtenances) which are installed or used by the Permittee for pollution control"

The permit can more clearly define the phrase "properly operate and maintain" as it relates to facilities and systems of collection, treatment, and control.

> "The Permittee shall at all times properly operate and maintain all facilities and systems of collection, treatment, and control (and related appurtenances) which are installed or used by the Permittee for pollution control. Properly operated and maintained units shall be defined such that inspection and maintenance protocols and frequencies for control and treatment BMPs must be performed according to manufacturer's or designer's recommendations."

Comment 17. Appendix #2 – Definitions. Capital Improvements, item 1. (page 50 of 58)

> "1. Treatment BMPs, including but not limited to: biofiltration systems including constructed wetlands; settling basins, oil/water separation equipment, and detention and retention basins."

Media filtration is particularly effective for control of oil, grease and associated volatile organic compounds, particularly as a polishing step to gravity separators. We suggest this definition offer media filtration as an option to owners. We suggest the following simple revision:

> "1. Treatment BMPs, including but not limited to: biofiltration systems including constructed wetlands; settling basins; oil/water separation equipment; media filtration; and detention and retention basins."

Comment 18. Appendix #2 – Definitions. (page 55 of 58)

> "Stormwater Management Manual for the Puget Sound Basin (SWMM) of Manual means the technical manual prepared by Ecology for use…"

We suggest this definition be updated to refer to the new Stormwater Management Manual for Western Washington (August 2001) as superceding the Puget Sound Basin Manual. Also, referring to the Puget Sound Manual as 'SWMM' is confusing since SWMM is used in the text of the permit in reference to the Stormwater Management Manual for Western Washington.

We further suggest that Ecology add a definition for the Stormwater Management Manual for Western Washington (SWMM) and indicate where Permittees may get a copy for reference purposes.

WaferTech

WaferTech is hereby submitting to the Department of Ecology written comments on the proposed Industrial Stormwater General Permit:

- S4 Monitoring Requirements: 1. "All samples will be grab samples taken within the first hour of discharge".

  3. "The storm event sampled must be at least 0.1 inches of rain in a 24-hour period".

Facilities typically set-up courier service and analysis with off-site labs as soon as possible on the day a sample will be taken. Each permitted facility in the State of Washington will spend an estimated 2-3 hours of time to take samples. Estimated cost per sampling event would be approximately $100.00. The decision to sample within the first hour of discharge will result in samples sent to labs for analysis, later to discover the storm event did not meet requirement # 3. This requirement will cause confusion-does this storm qualify or doesn't it?, overload analytical labs and increase expense for accredited labs

and permittees. The sampling expense for 8 consecutive quarters could easily double, when considering these "non-qualifying samples".

- S4 Monitoring Requirements: A 2. pH limit of 6-9

Clark County has acidic rainfall, which is typically below pH 6.0, please see attached pH graph for 1987-2001 taken from precipitation data sampled by the National Atmospheric Deposition Program. This program samples trends and maps data on major ions contained in precipitation throughout the United States.

The Fact Sheet Summary states on page 30 " Rainfall is slightly acidic as it hits the ground but buffers quickly achieving near neutral pH". DOE is assuming the buffer effect will always occur.

The Summary states that "pH is included in the base level monitoring requirements to determine how acidic/alkaline the discharge is." This information can be gathered by sampling pH and reporting, without any established limits.

EPA's program on Acid Rain states that "about half of the acidity in the atmosphere falls back to earth through dry deposition. The wind blows these acidic particles and gases onto buildings, cars, homes, and trees. Dry deposited gases and particles can also be washed from trees and other surfaces by rainstorms. When that happens, the runoff water adds those acids to the acid rain, making the combination more acidic than the falling rain alone. Prevailing winds blow the compounds that cause both wet and dry deposition across state and national borders, and sometimes over hundreds of miles."

The Summary for the Draft Permit states on page 31: "If the stormwater discharge is strongly acidic, 5 or lower, or strongly alkaline, 10 or above, the Permittee should immediately begin looking for a source of contamination". How will DOE address those Permittee's where the source of contamination is off-site? These facilities should not be considered "out of compliance" due to circumstances beyond their control.

The EPA also states that "normal rain is slightly acidic because carbon dioxide dissolves into it, so it has a pH of 5.5." Requiring a pH limit for stormwater would be extremely difficult to control.

S4 Monitoring Requirements: A 3. Additional Metal Sampling "If the value for zinc exceeds the benchmark value for 2 consecutive quarters, beginning with next sampling quarter the Permittee shall include analysis for copper and lead… for the remainder of the permit term".

This requirement is apparently based on a study in Connecticut, which linked higher zinc levels to higher copper and lead levels. DOE is assuming conditions in Connecticut are similar to the State of Washington. Sampling for copper and lead should not be performed for the remainder of the permit term. Sampling requirements for copper and lead, if required, should be consistent with all other sampling frequencies.

WestFarm Foods

This letter is being submitted as WestFarm Foods comments regarding the above referenced draft permit.

WestFarm Foods has several milk processing facilities in the State of Washington (SIC 20XX). We are concerned about the added burden the draft permit will place on our industry and believe that burden is excessive. Specifically:

- **Condition S4.** requiring quarterly stormwater sampling, analysis and reporting is excessive. WestFarm Foods has facilities in California, Idaho and Oregon as well as Washington. Our California and Oregon facilities are required to sample and analyze stormwater, but only twice per year. Those two states also require reporting of those two sample results only

once per year. Idaho which is permitted under the EPA Multisector Permit does not even require stormwater sampling.

Most of our facilities discharge to municipal stormwater conveyance systems. Therefore, we do not have the luxury of end of pipe sampling for the entire facility. Collecting samples from multiple drains on a quarterly schedule is burdensome and costly to our facilities.

Also, particularly in Eastern Washington, but even in Western Washington, an entire calendar quarter may not see any rain. Trying to catch that 1 or less scarce day of measurable rain during the dry season would be an effort in futility.

Therefore, we request that the sampling requirement in the draft permit be reduced to semi annually (Jan. – June and July – Dec.). Also, we request that the reporting of those 2-sampling events be combined into one annual report. We doubt that Ecology will respond or act on sample data more frequently than annually anyway.

- **Condition S2.B.1.** requires currently permitted facilities to submit a receiving water body form to Ecology by September 30, 2002. Our permitted facilities have submitted their Stormwater Pollution Prevention Plans (SWPPP) to Ecology. Those SWPPP's identify the receiving water body. Condition S2.C.2. requires that a facility must submit a SWPPP within 30 days of receiving coverage. Therefore, we see no need to separately report the receiving water.
- In addition, 30 days to prepare and submit a SWPPP is not adequate. We request that the submittal due date be changed to 90 days. Retaining 30 days will result in facilities not meeting the due date or submitting inaccurate/incomplete SWPPP's.
- **Condition S4.** indicates that the permittee is not required to sample outside of regular business hours… During the workshop you (Keith Johnson) commented that a facility that operates 24 hours/day must also sample 24 hours/day. Our facilities operate 24 hours/day, but outside 7AM and 6PM only a skeleton crew is working on-site. Our Stormwater Pollution Prevention Teams consist of supervisory personnel that work most often between 7AM and 6PM. If they are on-site outside those hours it is because of some unusual circumstance that consumes 100% of their attention and it is not possible to take stormwater samples during those times.

  Keith, you commented that industry has been very innovative in the past and you believe industry will find a way to sample during non-office hours, possibly automated samplers. Stormwater sampling from multiple drains, 1 hour after the start of the storm, after a 24 hour dry period is much more complex than automatic sampling of a continuous wastewater discharge. We don't think automated sampling is practical.

  Therefore, we request that verbiage be added to the permit to spell out that "regular business hours" means "8AM to 5PM, Monday through Friday".
- **Condition S4.D.** requires facilities discharging to 303(d) listed waterbodies to test for "the parameters named on the 303(d) as causing impairment of the listed waters…" Many industrial facilities do not know where to access the 303(d) list to determine 1) if they do discharge to a 303(d) listed water and 2) to determine what additional testing parameters are required.

  Therefore, to assist permittee's in complying with the permit, we request that, prior to December 31, 2002 Ecology notify all permittees that discharge to a 303(d) listed water body. Also a copy of the 303(d) list and the impaired parameters should be attached to the permit as an appendix. Also, if the list is available online the website should also be included.
- Finally, sections in this draft permit that pertain to compliance with water quality standards, mixing zones and discharges to impaired waterbodies are very confusing to those of us whose business is to process food. We are not stormwater experts and therefore hope that Ecology might better clarify

those portions of the permit. We also are puzzled why this draft permit reportedly can apply to discharges to groundwater, while the Federal Clean Water Act, which we understand is what this permit is intended to enforce, only applies to discharges to surface water.

WestFarm Foods supports the Compliance Schedule in Condition S3.D.2. and encourages Ecology to retain it as written. WestFarm also agrees that the SWPPP need not be submitted to Ecology every time it is updated.

Weyerhaeuser Company

Enclosed are Weyerhaeuser Company's comments on the proposed NPDES Industrial Stormwater General Permit (version dated March 29, 2002). This is an important regulatory permit for the Company. Weyerhaeuser currently has 25 facilities subject to the Industrial Stormwater General Permit. While much of this permit is reasonable and can be expected to produce good environmental outcomes, there are other provisions that are unclear or are not practical. There are several areas where the agency has made discretionary policy choices which are contrary to adopted regulation and will unnecessarily be contentious and costly to deal with.

Our comment format will identify a specific permit section, a statement identifying the "problem," some discussion of the issue, and will generally offer a suggested permit revision.

COMMENT 1 S1.D.1. – The example in the first bulleted subparagraph to describe a "significant process change" implies the need for extensive data collection.

Discussion: A specific threshold requirement is established; i.e., "add different pollutants to the discharge or increase the amount of pollutants." To make this assessment a facility would logically need to develop comprehensive baseline information on stormwater pollutants before any process change, and then after the change. Is that the type of effort which Ecology intends by this language or is the intent that this be a best professional judgment decision?

The more specific example relating to a facility change which adds a new SIC code activity is easily understood and can be managed against.

Proposed Change: Eliminate the first phrase in the first bulleted paragraph. Allow those process changes which lead to a SIC code change to be the "modification" evidencing a "significant process change."

COMMENT 2: S2.B.3. – Some provision needs to be made for facilities to gain permit coverage where Ecology has determined them to be "Significant Contributors of Pollutants" so that they are not in technical violation of NPDES permitting requirements.

Discussion: This determination would occur for facilities which have considered themselves exempt from the need for permit coverage. CWA liability for on-going unpermitted discharges of stormwaters should not be created with an Ecology "Significant Contributors" determination.

Proposed Change: Add language in S1.E. to indicate that a facility subsequently designated as a "significant contributor" has a set number of days to submit an application for coverage under this permit (or maybe through an individual permit). Identify a mechanism (either a declaration in this permit or provision for a compliance order) which protects against a non-compliance status during the time the Significant Contributors determination is announced and Ecology's issuance of permit coverage.

COMMENT 3: S2.B.3.b. – The definition of "Existing Facilities" is inconsistent with the permit language in S2.B.1. and with the definitions of "New Facility" and "Existing Facility" in Appendix #2 of the permit.

Discussion: It is an incongruous decision to say that only those facilities in operation before November 18, 1995 are existing. This has to be an error.

Proposed Change: This permit should recognize that all facilities with coverage under the November 2000 permit are Existing Facilities.

COMMENT 4: S2.B.5. and S3.E. – Read together, it is not clear if Existing Facilities need to make application to gain a mixing zone.

Discussion: An Existing facility would presumably not need to make an application for coverage under this reissued permit. Yet the language in S3.E. suggests that submittal of an application is necessary to have a mixing zone granted; i.e., "A mixing zone may be requested during application for coverage…".

Proposed Change: WAC 173-201A-100(10) presumes that a mixing zone exists for stormwater discharges. There should be no need to specifically "make application" to gain a mixing zone. The two sections of the proposed permit should be clarified to make this clear.

COMMENT 5: S2.B.5.c. – A definition for "expanded mixing zone" should be provided.

Proposed Change: A definition should be added for this term in Appendix #2. The definition should reference WAC 173-201A-100(12) which describes the basis for expanded stormwater mixing zones.

COMMENT 6: S3.B.1. – The definition of "Process wastewater" offered in this permit is unclear and/or overly broad, and should be adjusted to avoid confusion.

Discussion: Literal use of the permit definition will leave most facilities in the state ineligible for coverage under this general permit. During "manufacturing, processing, operations or maintenance" activities, precipitation which falls on a facility site will come into contact with "raw materials, intermediate products, finished products, byproducts, or waste products." This permit defines this as Process wastewater, and makes the facility ineligible for permit coverage.

Proposed Change: A simple clarification would be to adjust the second sentence to say *"Process wastewater* means any non-precipitation water source which, …".

COMMENT 7: S3.D. (new subsection) –This section should be added to specifically allow certain non-stormwater discharges.

Discussion: Consistent with EPA Multi-Sector General Permit for Industrial Activities (65 FR 64807, October 30, 2000) the following non-stormwater discharges should be explicitly recognized and allowed in this permit:

- Discharge from fire fighting activities
- Fire hydrant flushing
- Potable water, including water line flushing
- Uncontaminated air conditioning or compressor condensate
- Irrigation drainage
- Landscape watering provided all herbicides, and fertilizers have been applied in accordance with manufactures instructions
- Pavement wash waters where no detergents are used and no spills or leaks of toxic or hazardous materials have occurred (unless all spill materials have been removed)
- Routine external building wash down which does not use detergents
- Uncontaminated ground water or spring water

- Foundation or footing drains where flows are not contaminated with process materials such as solvents.
- Incidental windblown mist from cooling towers that collects on rooftops or adjacent portions of your facility, but not intentional discharges from the cooling tower

COMMENT 8: S3.D – The preamble paragraph specifically states that compliance with water quality standards is required "at the location named on the State 303(d) list." The 303(d) list is comprised of named waterbodies and is specific to a 640-acre section. The implication is that unnamed tributaries or ditches into the specific 303(d)-listed waterbody would not be burdened with the S3.D. restrictions. Can Ecology please confirm this intention?

COMMENT 9: S3.D.1 and 2. – The requirement that any facility discharging to a 303(d) listed waterbody must meet the water quality criteria for the named 303(d) pollutant at the point of discharge is not supported by the intent and clear language of WAC 173-201A-060 and –100. These provisions are inconsistent with the Clean Water Act programs for addressing impaired waters. Ecology has discretion to implement a more reasonable approach to address this issue.

Draft permit requirement is inconsistent with Federal Clean Water Act procedures. This inconsistency will have some adverse effect on Washington's economy.

The remedy under the Clean Water Act for waterbodies deemed not to comply with applicable water quality standards is the development of a Total Maximum Daily Load allocation budget. This draft permit effectively preempts this regulatory process. Instead of allowing a science-based and targeted corrective action plan to be developed and implemented, the proposed permitting structure will cause premature actions to cause existing permittees to effectively over-treat stormwater before the TMDL-derived allocation is set. Over-treatment will impose unnecessary incremental costs on this set of permittees. Existing permittees will be in technical "non compliance" with the CWA. The proposed permit will also discourage or effectively prevent new or expanded activities. Together, these discretionary choices by the agency will have some dampening effect on Washington's economy. They will not make Washington more competitive in attracting and retaining business.

There is no existing legal requirement for demanding compliance at the point of discharge

The Northwest Pulp and Paper Association has commented on the lack of any legal requirement for compelling compliance with water quality criteria at the point of discharge in 303(d) listed waterbodies. Weyerhaeuser supports the comments made on this point by the NWPPA.

Draft permit is not supported by WAC 173-201A-100(10)

The language of WAC 173-201A-100(10) directly addresses the applicability of mixing zones for stormwater discharges. This wording of this section presumes that a mixing zone will be granted to stormwater dischargers. The only limitations to the granting of a mixing zone are presented in WAC 173-201A-100(10)(b). None of these limitations address the characteristics or attainment status (for water quality standards) of the receiving water.

Draft permit is not supported by WAC 173-201A-060 and -100

Ecology has recently developed guidance for its Permit Writers Manual which effectively would prohibit the authorization of a mixing zone for an NPDES permittee discharging a pollutant for which the receiving water is listing on the states 303(d) list. Ecology's guidance is flawed on two points. First, it is inconsistent with WAC 173-201A-100, WAC 173-201A-060(5) and (6), and with the agency's own history of NPDES permitting based on these sections. Second, the Permit Writers Manual is guidance, it is not adopted regulation. Agency guidance does not trump rather clear adopted regulation. Ecology must honor adopted state regulation and provide a mixing zone for stormwater discharges.

Draft Permit is internally inconsistent with Ecology's Water Quality Program policy positions. Adverse impacts from the implementation of this proposed permit will occur due to erroneous mis-labeling of waterbodies.

Program guidance, to be announced in the Permit Writers Manual, will acknowledge that a 303(d) listing does not presume that water quality in a waterbody is really impaired. This is tacit recognition that the quantity and quality of data, and the decision criteria for determining "impairment," may not have been comprehensive enough to make important 303(d) labeling decisions. Re-worked listing criteria to be used for preparation of the 2003 list will presumably yield greater confidence in the true status of a waterbody. In the interim, however, existing and prospective new permittees will incur adverse outcomes from implementation of the proposed permit.

Proposed Change: Sections S3.D., S3.E., and S4.D., of the permit should be re-drafted to allow for mixing zones in all waterbodies consistent with the clear language of WAC 173-201A-100(10).

COMMENT 10: S3.E.2. – The allowed mixing zone dimensions do not literally conform to the delineation process specified in WAC 173-201A-100(10) *Storm Water*. The "design storm" is not explicitly identified in this permit.

Discussion: The suggested changes add clarity and conform the permit to specific state regulation language.

Proposed Changes: There are three suggested changes to the permit.

First, Ecology should specifically identify the "design storm." For Western Washington, a "24-hour storm with a 6 month return frequency" should be designated as the design storm. This could be added as a new subparagraph E.4.

Second, subparagraph E.2.a. should be expanded to read,

"a. Streams, rivers, natural or constructed stormwater conveyance systems:" This change will simply recognize that stormwater discharges into the smallest of receiving waterbodies will be allowed a default mixing zone.

Third, subparagraph E.3. should be reworded to say,

"3. An applicant/permittee may request a "non-standard" mixing zone size based on a volume of stormwater runoff corresponding to the design storm specified in this permit, or an expanded mixing zone size due to precipitation events greater than the design storm specified in this permit. In each case the applicant/permittee must clearly demonstrate the requested mixing zone complies with the requirements of WAC 173-201A-100 (10) *Storm water*."

COMMENT 11: S3.F. The proposed General Prohibitions permit language is too absolute and cannot reasonably be complied with.

Discussion: The requirement to "prevent" any oil sheen or floating materials is simply too stringent and unequivocal. To some extent, these would require subjective assessments on whether a sheen is from a petroleum source or is a natural vegetation degradation product, or whether floating leaves, needles, bark, soil, etc., constitute regulatory non-compliance with S3.F. This permit identifies Benchmark Values for "Petroleum – Oil and Grease" and "Turbidity." These objective measures of BMP performance are superior to the simplistic General Prohibitions language.

Proposed Changes: Delete the General Prohibitions language in S3.F.

COMMENT 12: S4. – A number of the specifications in this Monitoring Requirements section are overly burdensome and expensive, or as a practical matter, unfeasible.

Discussion: This permit section should be softened to articulate sampling goals and objectives, and be less prescriptive. There are many site-specific factors which may make literal compliance with the proposed requirements extremely difficult, and out of balance with the practical and regulatory value of the resulting data.

Suggested Changes: These changes should be worked into the permit language:

Preamble – The sampling instructions sentence should be modified to read, "The Permittee is not required to sample at night but should make an effort …". For many manufacturing facilities "regular business hours" is 24 hours/7 days per week. Sampling at night would add significant safety risk.

Paragraph 1. – Change to read, "All samples will be taken as close to the point of discharge as reasonably practical and consistent with good safety practices…"

Paragraph 3. – The requirement to both sample within the "first hour of discharge" and to meet a "0.1 inches of rain in a 24-hour period" sized event could be very difficult and expensive. Most facilities with multiple discharges will need to rely upon environmental consultants to accomplish the sample collection. A number of Weyerhaeuser facilities have 12-15 discharge points. This implies that 8-10 people will be required to accomplish the permit directive. The cost of mobilizing a consultant team to a remote site for a sampling event will be at least half the cost. It may not be possible to accurately anticipate and meet these literal requirements when the consultant team is traveling from an urban center to a rural location. A longer allowed sampling window would be more reasonable.

Paragraph 4. – For areas with high seasonal ground water or allowed "non-stormwater, non-process water" discharges there may never be a period of "no discharge." The trigger for sampling would better be expressed as "preceded by at least 24-hours of no precipitation."

Paragraph 5. – The allowance to group similar discharge points based on common upland activities or site conditions is appropriate. Differences in "discharge volumes" should not disqualify the opportunity to group comparable discharge points. Discharge volumes are determined by size of drainage area and amount of impervious surface area. This is benign. The evaluation for grouping similar discharge points should focus on the "activity." The permit should simply require an analysis to be provided in the SWPPP explaining the reasoning for the selection of discharge points for sampling.

Paragraph 5. – Language should be added which explicitly excludes from the need for S4. Monitoring, those stormwater discharges from office buildings and/or administrative parking lots not requiring coverage per S1.B.4. As currently worded, discharges from these parking lots that are part of a larger industrial/commercial complex that does require permit coverage and monitoring, would not be excluded.

S4.A – It is not at all clear what is meant by the directive that "Test methods are the minimum level required." This should be clarified and re-worded.

S4.A. – This section fails to address the situation where stormwater pollutants from facilities, activities, or land uses up-gradient from the permitted facility are impacting stormwater quality. What are Ecology's expectations and guidance on how a facility should sort out these background contributions?

S4.A.1. – The directive that visual monitoring be used to determine that "controls" are "adequate" entails the need for subjective judgments. The mere observation of an "odor" or "discoloration" or "turbidity" does not imply that there is a problem which needs to be addressed. An assessment against Benchmark Values and, ultimately, an empirical assessment of stormwater impacts at the edge of a authorized mixing zone, will determine whether the BMPs are adequate.

S4.A.1. – A requirement to visually inspect for "suspended solids" and "oil and grease" is not possible. By definition these pollutants are in the water column, and cannot be evaluated by visual observation. Observation for visible sheen and turbidity would provide some information.

S4.A.1. – The last sentence in the second paragraph judges that all non-stormwater discharges are "illicit." Referring to Comment 7 above, the implication is that Ecology will be willing to write individual NPDES permits for each of those "non-stormwater/non process waters" discharges. This would not be a good use of limited agency permitting resources.

COMMENT 13: S4.B.1. - It is acceptable that the additional monitoring parameter for "Timber Products Industry, Paper and Allied Products" be Biological Oxygen Demand. The Benchmark value should be much higher.

Discussion: A BOD5 value of 30 mg/l is equal to the performance from a standard secondary treatment process. A stormwater sample collected in the initial hour of a significant storm event at a wood products facility can be expected to have an elevated BOD5 concentration, then to fall off with time and flow volume. A value of 100 mg/l would be a better indicator of BMP performance and opportunity.

Proposed Change: Substitute a value of 100 mg/l BOD5 as the appropriate Benchmark value.

COMMENT 14: S7.A. and B. These sections need to be adjusted consistent with the discussion presented in Comment 9.

COMMENT 15: S7.A. The second sentence should either be eliminated or faithfully track with the provisions of WAC 173-201A-100(10) and our suggested revision to S3.D. This could be accomplished by changing this sentence to read, "Compliance with surface water quality standards shall be determined in a manner consistent with WAC 173-201A."

COMMENT 16: S7.B. Are enclosed culverts and/or pipes considered "waters of the state?" Are constructed wetlands, or stormwater treatment and conveyance systems? The permit should clarify where the point of compliance is for stormwater discharges to these types of non-traditional waterbodies, and whether their location on or off the facility property, or ownership status (public or private) makes any difference. A typical example to illustrate this question would be where facility stormwater drops into a constructed and enclosed municipal subsurface conveyance system; i.e., a pipe, and where that conveyance does not "daylight" for some distance. Where is the point of compliance and why?

COMMENT 17: S7.C. – This permit should simply specify the "water quality design storm or the water quality design flow rate" and eliminate the reference to the "applicable stormwater management manual identified in Special Condition S9.5." (Note: the reference apparently should be S9.A.5.) The "24-hour storm with a 6 month return frequency" should be specified in this permit as the design storm for Western Washington.

Discussion: WAC 173-201A-100(10) explicitly identifies that Ecology will approve a "design storm." With the consideration of site specific factors, this design storm can be translated to a quantity of stormwater runoff. This stormwater quantity can then be used in design considerations for BMPs.

Proposed Change: The "24-hour storm with a 6 month return frequency" should be specified in this permit as the design storm for Western Washington.

COMMENT 18: S8 – The intentions of the permit directive in the preamble to the section which "…requires the operation of back-up or auxiliary facilities or similar systems…" is not clear.

Discussion: The implication is that redundant structural source control or treatment BMPs might be expected and required. Ecology's intentions need to be clearly articulated.

Proposed Change: Either eliminate the sentence in the preamble beginning with, "This provision requires the operation of back-up or auxiliary facilities or similar systems,…" or provide very specific direction on the types and situations when duplicative "auxiliary facilities or similar systems" need to be provided.

COMMENT 19: S8.A. – There should be explicit recognition that stormwater flow quantities in excess of the "design storm" may be bypassed around BMP treatment systems.

Discussion: BMP treatment structure bypass of stormwaters arising from precipitation events greater than the design storm will necessarily occur. Without physical bypass provision the risk is that BMP systems will be rendered inefficient or that the treatment structures will be physically damaged. The environmental impact of the stormwater discharge from a "greater than design storm" bypass is expected to be minimal. Pollutant concentrations in the bypass stormwater should be extremely dilute and the receiving waterbody can be expected to have much assimilative capacity.

Proposed Change: Add a new subparagraph S8.A.4. which says:

"4. Bypass which is directly related to stormwater quantities arising from precipitation events greater than the approved design storm.

This bypass of treatment BMP's is authorized. The permittee has no obligation to notify the Department of these events, but will keep a record of the occasions when a bypass attributable to this cause is observed."

COMMENT 20: S9.A.4.a. – What is the form of the "notice" Ecology could issue to a permittee? Is it a regulatory order, or simply a letter providing technical assistance and recommendations?

Discussion: Technical assistance by Ecology personnel is appropriate. A sharing of "best practices" from facility to facility would be appreciated. The agency also has authority to issue a regulatory order to compel actions to ensure compliance with Washington state law.

Proposed change: Clarify what the legal status of the "notice" will be. Label the regulatory action an "Administrative Order" if, in fact, Ecology's intentions are to make the action mandatory.

COMMENT 21: S9.A.4.c. – Unless the situation is truly egregious, the use of visual monitoring to determine the actual discharge of a significant amount of a pollutant amounts to a subjective judgment. It is not clear how visual monitoring could be used to determine the "potential to discharge a significant amount of any pollutant."

Discussion: This permit needs to offer clear direction on the regulatory triggers which require follow-up actions. The language in the draft permit relating to visual monitoring is too ambiguous to yield consistent and confident determinations on a "significant amount of any pollutant."

Proposed change: Eliminate the last sentence in paragraph S9.A.4.c.

COMMENT 22: S9.A.5.a. and b. - The Stormwater Management Manual for Western Washington is a comprehensive technical assistance document. While there was significant public involvement in the development of the manual, Ecology made no effort to adopt it as a regulation through procedures specified in the Administrative Procedures Act. Ecology should not attempt to bootstrap use of the Manual into becoming a minimum and mandatory regulatory requirement.

Discussion: The use of the mandatory "shall" language for the manual should be replaced with language indicating it is a technical support guidance document from which permittees could self-select the BMPs necessary to accomplish good performance.

COMMENT 23: S9.B.3. – It is not clear what regulatory authority Ecology is relying on to direct that "peak flow" be regulated. How is "peak flow" defined? What would it mean to regulate "peak flow?"

Discussion: The NPDES permit program regulates the discharge of pollutants. Ecology should reconcile this proposed requirement for control of "peak flow" with the definition of "pollutant" appearing in Appendix #2 of this permit. Also, the agency should better define what it means to regulate peak flow.

COMMENT 23: General Conditions G3 – The directive in this condition is relevant for facilities generating process waters. Unless Ecology can explain its applicability to stormwater discharges, it should be removed.

COMMENT 24: Appendix #2 Definitions –

The "Design Storm" should be defined as a "24 hour storm with a 6 month return frequency."

The "Discharge Target" is a useful concept and the pollutants and values suggested are reasonable. However, the term does not appear anywhere in the body of the permit. The permit should offer some explanation of the intention for these Discharge Target(s) and contrast that with the Benchmark Values concept used in the permit.

Thank you for the opportunity to offer these comments.

Testimony Provided by:

Brian Ferrill

I am Mr. Brian Ferrill. First off to give some ideas of effectiveness of your notices, I'm from Everett, Washington and I drove over here specifically to attend this – this public hearing. I'm with a small company called "Pull-A-Part" that I am also a representative of ARO – Automotive Recycler of Washington and we do feel that it's vital that we get some of our concerns and comments made and known to the Department of Ecology.

And one of the first ones that I would like to bring up is the definition of receiving waters and how are we going to ID the receiving waters when my stormwater runs off into a ditch? Do I track the ditch to the nearest stream? Then do I track the stream to nearest river that has a name? So that I can ID it. Or, do I just put on my permit that my stormwater discharges to the ditch. That's a concern.

Also of concern to us is that in our industry the majority of auto recyclers buy their cars at auction that are open to the public. Everybody thinks that auto recyclers buy the majority of the wreck cars. We don't. The general public buys sixty to seventy percent of these cars at auction. Whereas your licensed auto wreckers buy the rest. Now we are competing against the general public and they don't have to comply with these rules and regulations like we do.

Then you have another concern is if I am at a auction, and it starts to rain, then I haven't been able to get my sample in, then it means that I've got to leave this auction when competing against the general public to buy my vehicles to properly recycle and they are buying my cars or they don't have to recycle like I do. They don't fall under the same regulations that I do, so I drive all the way back to my place of business only to find out that it didn't rain the proper amount, I didn't get a tenth of inch, so I lost an opportunity to buy stock for my business, I lose out to my competitors to comply.

Another concern is if I do – if it does – is a qualifying storm event and it does start raining and I do get the tenth of inch, being able to get to my facility within the timeframe that specified in the permit. I do believe the curb permit specifies that you have to – have to take the sample within half of hour of qualifying storm event. How strictly is that going to be enforced? You know, if it starts to rain at 2:00 a.m. in the morning am I suppose to get up and go so that I can make it within the timeframe?

Another concern is that complying with the state regulations should be a competitive advantage not a disadvantage. An currently it feels like being in compliance is disadvantage, I do understand that its not the Department of Ecology's fault, but there is so many illegal auto recyclers out there, but it does put me in a competitive disadvantage having to comply. Thank you.

Dan VanderKolk

My name is Dan VanderKolk. I'm here as a private citizen. And kind of came here by accident. The accident occurred near my home when I was paddling my kayak up the river and noticed a discharge of effluent into the waterway. I have a written narrative here that I will submit (follows the verbal testimony). I won't take a lot of time to go over all the details.

What I found was an egregious violations of the water quality standards of the permit that was supposedly being administered to this company. I found this company totally out of compliance and showing no inclination whatsoever to come into compliance. This had been the situation that had gone on since at least 1999 when their inspection report shows that they were contacted and told that there was a problem. I normally am not involved in these kinds of issues. I am a real estate developer. I have paid thousands of dollars to different state agencies or to comply with different state agencies, city governments, municipalities, counties, in order to ensure that I was in compliance with the Clean Water Act. And when I find companies that are getting a way with this, I find it very disturbing.

Just a little further upstream from this, I was wondering why the river was always so brown and I found out when I got home and read the paper in April that another large company was discharging silt into the river. Through a freedom of information request, I found out that they received a $24,000 fine, but it was approximately $430,000 less than they probably should have received. So they got a $430,000 profit at the expense of me, the rest of the citizens in my town, and the state.

Both of these companies are owned by Canadian citizens, they're not even in our country. I joined several groups as a result of this and one of them sent me a request to come down here and testify today, which I did.

I believe Richard Smith is an attorney in Seattle has prepared a document that talks about his concerns about the deficiencies in this new stormwater permit. I won't go over those here today. They are in this document. I think the four, certainly the big issues that he addresses, should be followed. And I think any other recommendations that he has should also be incorporated. I don't believe, from my experience, that industry is able or shows any inclination to monitor itself. These were two very egregious violations.

And so I think Ecology needs to step up enforcement and make sure that we have good rules and regulations on the books. I find the characterization very disturbing for Ecology. Now I feel that they are more looking at the violators as customers. It's as if the State Patrol stops someone going, a drunk going 90 mph up I-5 and decided that he was a customer that they needed to bring into compliance. I think some stiff fines and some real very definite financial burdens should be assessed. Thank you.

(Written Testimony Submitted at Hearing)

I'm here today to offer my testimony. I'm here by accident and reluctantly. I'm the most important witness you will hear today. I may be the most important witness you will hear in course of these meetings. I'm not important as an individual. I'm only important as a token of the people I represent. They are thousands of citizens who complacently go about their daily business confident in their own minds that certain functions of government, laws, rules and regulations which have been passed to protect them are being followed and enforced. We go to work, play softball with our kids, go to church, watch 'Friends' on TV and go out to dinner with our wives confidant that the Clean Water Act will insure that our rivers, streams and lakes will be kept free of contaminants and that the Clean Air Act will keep the air we breath free of harmful substances. We have been lulled into this complacency, I think, by our innate inclination to be good citizens. We mow our lawns, put the garbage out for pickup, clean our houses and volunteer for civic activities. As a rule we don't lie, cheat, steal or behave in a dishonest manner in order to get ahead. We pretty much abide by the rules and we represent the majority of the people who live in this society. Mostly we interact with one another and assume that our experience is pretty much the way things are all over. We trust others. We trust our elected officials and we trust the companies we do business with and work for

If you rented ten Kingdomes you couldn't even begin to accommodate all the people who should be here testifying today. I'm like the tip of an enormous iceberg and that is what makes my testimony so important. I am saying what the vast majority of citizens would say if they, like me, had had their complacency shattered. The incident that shattered my complacency was the result of kayaking, an activity I engage in several times a week. I live on the Skookumchuck River in Centralia and it provides a convenient and enjoyable way to exercise. Two years ago as I paddled by a certain stretch of river I noticed a sewage like smell. It seemed to originate in the area of an industrial plant called Ace International, Inc. where a drainpipe emptied into the river. When I returned home I called the Centralia City Manager and voiced my concern about pollution entering the river. He referred me to the City Engineer who referred me to the County Environmental Health officer who assured me he would make an investigation. I soon forgot about the incident.

This January I again noticed the smell and this time I pulled my boat close to the bank. Not only was there a distinct odor, but also the branches and twigs for about 50 feet along the riverbank were covered with some kind of white fungus. I got out of my boat and climbed up the bank to see where the water was coming from. From the top of the bank I could see a ditch about a quarter mile long and 30 feet across that contained the most disgusting mucky ooze imaginable. I've been in several third world countries and with the exception of the river in Belize City I don't think I've ever seen a nastier looking creek.

When I got home I started making phone calls. I called the City Manager, the Mayor, the County Health Dept., the Dept. of Ecology, and the newspaper. The next day two employees of the Lewis County Environmental Health Dept. met with me on the site. They expressed their disbelief at the condition of the waterway. One of them happened to be the individual who had 'handled' my first complaint a year earlier. He told me that when he contacted the plant manager over that incident he was assured that it was a small problem that was already taken care of and he never visited the site. 'He's not going to blow me off again!' was his comment about handling this new complaint. I asked all the representatives of the agencies I called to keep me informed of the disposition of this complaint and they assured me they would. I thought it only fair to call the plant manager myself and let him know of my concerns. He was cordial, but insistent, that his plant was in full compliance with all environmental regulations, that they didn't use any water in their manufacturing process and they didn't even need a permit from DOE since they didn't discharge anything. I was cordial also, but asked that he at least walk onsite to see what the situation was. His office was a few blocks away and he wasn't engaged in the day-to-day plant operation.

Time passed. My mother was 89 years old and in the latter stages of Alzheimer's and I was caring for her. I was also managing about 50 rental houses, running a crew of maintenance and remodeling workers, working on commercial and industrial development properties and continuing to buy and sell real estate. I was complacent, but also quite busy. I noticed on my kayak trips that the situation at the pipe had not changed and I finally called the County to find out what was going on. 'I'm tired of having this filth run into the river!' I told them. After several days they got back to me with the information that DOE had found Ace International was discharging untreated storm water into the river. . . along with numerous other violations. . . and they had written them a letter stating that they were in violation of the Federal Clean Water Act, but beyond that they weren't going to do anything else. Through a 'freedom of information' request at DOE I found that this company had been in violation of its permit at least since December of 1999 and probably well before that. They had also violated the Clean Air Act and been the subject of considerable problems with the neighbors in the area. After several threats they made some modifications and improved the dusty conditions, but on the day I was there they were illegally discharging particulate matter from their grinder stacks. A Canadian couple out of New Westminster, BC owns this company.

Just upstream about a mile Hanaford Creeks joins the Skookumchuck. On numerous occasions I noticed that it was full of silt. I knew the County had a rock pit upstream and thought they might be disturbing the bank. I was too complacent to inquire further as well as being busy. In April of this year I opened my paper and the mystery was solved. Trans Alta, another Canadian owned corporation, had just received a $24,000 fine from DOE for allowing too much silt to run off its strip mining operation. It is a huge corporation that contributes significantly to the City of Centralia's economic base. It also employs the State Representative from our area. Having learned a little from my experience with Ace I went up and reviewed the Trans Alta file at DOE. What I found shook me even further out of my complacent lethargy. While $24,000 seems like a lot of money to you and me, it isn't even 'spare change' for a corporation like Trans Alta. When electrical rates were spiking they opened up a new mining area so they could get at the coal seam underneath. Instead of taking the time to properly construct the needed barriers to keep the silt out of the river they focused on getting as much coal out of

the ground as possible so they could sell the power on the spot market and make a huge profit. Then came the rains and bingo they were in violation of their NPDES permit.

Their fine should have been $454,000, but DOE let them off for $24,000, a savings of $430,000. Even had they paid the full fine I doubt it would have represented a fraction of the profit they made on the decision to mine first and pay the consequences later.

In my experience as a developer I have had to spend thousands of dollars to mitigate environmental concerns from City, County and State agencies. These costs were absorbed into the development and consequently affected my bottom line. In short they cost me money. Money that I would much rather have kept for myself. There was some relief in the belief that I was being treated the same as everyone else and that the agencies in charge were insuring that the obligations by all parties were met equally.

It is with chagrin dismay and considerable anger that I find this was not. . . is not. . . the case. In fact our state agencies are lax about enforcement and in many cases are not actually fulfilling any 'enforcement' at all. The attitude I've seen is one of accommodation. Say the state patrol stops a drunk doing 90 MPH on I-5. Are they supposed to consider the violator a 'customer' they need to 'help' comply with the law? That is precisely the attitude I see present in the DOE hierarchy in dealing with Ace and Trans Alta. Breaking CWA regulations is standard operating procedure for many companies and weak enforcement makes the crime pay. . .handsomely.

Business cannot be trusted to monitor itself. Adequate regulations must be maintained and regulations must be rigorously and fairly enforced. You folks on this board have the responsibility to all the citizens of this state to insure this attitude is reflected in this Industrial Storm Water Permit. Mr. Richard Smith who has infinitely more familiarity with the document than I ever will has four major recommendations.

First, the section dealing with 'mixing zones' needs significant revision to insure the standards will be met. Second, Permittees should be required to adopt the new AKART requirements. Third, Permittees should not be allowed to maintain their own records they must be deposited with the DOE. Fourth, Permittees should not be allowed to bypass their NPDES permit with a 'no exposure' status by default. There are also numerous other considerations that he could supply if he hasn't already done so.

Your action on this issue is critical. We need to get the fox out of the henhouse. This is a situation that cries out for redress and a repair. I hope you will do the right thing and give the constituency that I represent a fair and equal voice in this important document.

David Manelski

My name is David Manelski. I'm a concerned citizen. _____. I just what to echo some points of people that have spoken already.

I strongly support Ecology for trying to make an effort to come out with water quality standards for stormwater. I think it's a major source of pollution. It's caused, according to Ecology's studies, 33% of waterways are impaired largely in part because of stormwater pollution. So I think it's something that needs to be addressed.

I don't want to take up too much time. I just briefly want to reiterate some of the points that have been made already.

I support the new monitoring requirements that will characterize the pollutants. That will actually go a long way in limiting the discharge of these pollutants into Puget Sound. During the next permit cycle, there will be a lot of new data to look through. As a consumer I'm willing to support additional costs of monitoring, reporting stormwater discharges that might be passed along to industries.

I'm a strong supporter of the Clean Water Act. It calls for all waterbodies to become fishable and swimmable. How is this really possible with 33% of local waterbodies impaired? There's clear language in the Clean Water Act in regards to mixing zones, monitoring and compliance standards and I'd like to see that reflected in the industrial stormwater general permit. Thank you.

Dr. Sharon Churchill

I am Dr. Sharon Churchill, I represent the U.S. Department of Interior, Bureau of Reclamation for three federal projects – representing approximately 20 percent of the land mast of the state of Washington. They include the Yakima Basin Project, the Columbian Basin Project, and the Grand Coulee Project office.

This is a neutral comment directed to permit writers and permit enforcement folks. We request due to the significant number of potential permitters within our three projects that the Department of Ecology regional offices in Yakima, and the Eastern Regional office in Spokane, commence either annually or semi-annually meetings with the Bureau of Reclamation to discuss potential permitters and changes to permits where is there is discharge of these waters to federal holding facilities or conveyance facilities. The reason we are requesting this is in the fifty years of the life time of these three projects there has been no significant dialogue between the state of Washington and the Federal Government, Department of Interior U.S. Bureau of Reclamation, Water Quality personnel on problems related to industrial stormwater issuance to our agricultural conveyance – water conveyance facilities in all three projects including major reservoirs that also have municipal interest as well. Because of past difficulties and because of misunderstandings between the federal government and the state government on – owner ship and water we ask that the issue of ownership be set aside and instead mutual interests discussed in maintaining water quality within these projects that meet not only state water quality standards, but also federal water quality policy. Thank you.

Hal Covey

My name is Hal Covey. I am from Marysville and I own Covey's Auto Parts. It's a wrecking yard. I have written down some things that I felt were concerns of mine after reading some of the information that your office sent out to us and also after talking with some of the people in Olympia. I have some troubles with some of the requirements and I just want to mention them for the record. It's not the first time I've mentioned these for the record. That's why I wrote them down because I sometime forget some them. And some of these I'll probably read because I'm not use to public speaking, I'm a wrecker. I'm not talking to individuals or talking to you across the counter.

The first minimum requirement proposed in this new permit will add an additional costs to my business and to our industry every year. Just penciling it out, I figured that it will cost me a minimum of $2,000 a year in my business. A like amount will be costing you. There are others who are affected by this $2,000 a year. That doesn't count necessarily the costs of testing and my continual running around. There's a cost of trying to figure out when I've got 1/10 of 1 inch of rainfall. I have to become weather man. I have to, in my business, I go from Bellingham to Portland to buy my inventory. So when it says I've got a one hour time limit to do testing that means wherever I'm at, I've got to drop what I'm doing just because it may have somehow rained of at least 1/10 of inch where I'm at, but in Marysville it hasn't rained a drop. So you can understand some of those things that concern me with regards to that. I also noticed that of the $2,000 a year, it would be equal to a B&O tax where somebody's doing $425,000 a year.

Next is the fact that my business must compete with others who don't do any of the stormwater runoff. I'm speaking here mostly of unlicensed or illegal wreckers. There are probably more of those in this state then there are licensed businesses. In fact, at the public auctions where I buy my inventory, 60 to 70% of all the automobiles that are there are bought by people other than myself or other wreckers like

myself. They are purchased by a guy who decides he's coming in to buy a car to fix up, a number of people who do it as business, or really illegal wreckers. And you see the state isn't concerned about them. They don't have to follow any of these requirements. They do penalize me if I happen to cross the line. I'm not saying the line is necessarily so rigid that we can't step across it once in awhile. You see these people, they're not concerned with the ___ oil they drain on the ground, what gasoline happens to go there, what Freon is put out in the air. From this state, I can speak from experience that the records of this state are probably as concerned about the environment as anybody around. And the environmental people in this state know that. But we feel like we're being penalized when additional regulations are placed on us.

Sorry, got to kind of look at my notes. The other thing about the illegal wreckers is these other businesses, or these other individuals, they don't have any records they have to keep, and they don't pay any state taxes, and they don't pay any license fees, and they're not regulated. You might think that I'm whining. But I'm not really. I mean you can look around in this room and I would venture to say that there's not a one of you that would come and buy my business today, for what we make today because of the environmental and regulatory kinds of things that are placed on our business today. No one's willing to do it any more. I can remember back years ago, any body would go out and buy one. But because of all the regulations today, they won't do it. It's not worth the hassle. In fact, in the last month, this last month, my very friends took his license and mailed it back to state. Said I can't afford another 2,000, 3,000, 4000 dollars in regulations to keep up with regulations. Not only that, we have two other big organizations in this state, if this passes the way or this regulation goes into effect the way it is, they'll wrap up and lock their doors. They're not small outfits, they're big outfits. You can't afford to be in business when you're regulated.

What I would like to see is (I lost my place) how am I suppose to identify the receiving waters, the stormwaters and runoff? And I understand EPA will help me figure that out. Now I have a piece of property which is an acre. It's all concrete. You don't see wrecking yards with concrete decks. I do. I have two water separators on that piece of property. I have five drains all together and I have what we call the well. That's where the water drains off the, it's really a septic system more than a well. In fact, I don't even know how I'm going to test it. In fact, the people I've talked to so far told me they don't know how they're going to test it either or how we test it either.

The testing, that's another issue. You know the one hour limit, I think that should be really looked at real hard. A one hour limit really isn't going to work in most of cases when we're two or three hours away from where our business is buying inventory. I buy inventory four days a week. I'm gone from my offices four days a week just to buy inventory. The fifth day if I was lucky I would stay away, but I have to work. The wording even if it was one hour or whenever reasonably possible, you know, would be better than having a stiff one hour regulation. I know the federal, I think the federal has a pretty stiff rule on that that you have to comply with. But I think we have in this state have flexibility to modify it to work for us.

In conclusion, the compliance of government regulations must be competitive advantage. I'm going to say that again. Compliance with government regulations must be a competitive advantage. In most cases, it's not. My illegal competitors who buy most of the cars won't comply with this regulation or any of the other regulations that I have to. If you can't force my competitors to comply, you shouldn't force me to comply. I'll be watching you to do that. If you don't make my illegal competitors comply, I might as well join them and avoid all these requirements. Just like all the rest of them do. I know it's not really the best way out because you're always have an advantage if you're on the inside working out. Not from the outside trying to work in. I don't see any other notes. For the record, I had to come and state it. Thank you very much for your time.

Judy Schramm

I'm Judy Schramm, with WaferTech, _____. And I would like to have Ecology rescind the PH limit as 6 to 9. They have stated that they would just like to gather data, and I know our area has acidic rain fall. I worked at the Port of Vancouver, that area also had acidic rainfall. I think you can gather the data and then assess the limits, maybe down the road.

Also I have some concerns about the sampling event being within one hour of a storm fall, or rain event then the 0.1 inches rainfall and I believe now that that might not even apply to me because of the retention pond issues, so I would like to see further guidance as well on detention ponds. That's all for me.

Kate Flaumer

My name is Kate Flaumer. I'm here a private citizen. I row, I kayak, I swim in these waters. I'm also – my concern has led me to be a member of the Board of Directors of the Puget Sound Keeper Alliance. Sue just spoke on behalf on the Sound Keeper Alliance. As a former federal prosecutor, I'm very familiar with criminal side of the Clean Water Act. I'm not so familiar with the civil side and how this all fits together. I'm learning a lot as we go along. What I do know as a long time resident of this area is that we have unfortunate history of making short-sighted decisions. Often at substantial savings which end up in huge costs down the road. We have resisted the costs of planning for the future in such areas as our mass transportation. And we're finding ourselves, thirty years down the road facing astronomical costs and huge public dissention and breathing air that rates among the worst five percent in the country. I think that history bears looking at and bears avoiding.

We cannot afford to take our water system for granted. Or to offer its degradation free to industry and consumers. We're looking at huge population growth in this area. I've seen different estimates by different agencies, but it is uncontested that Washington State is one of the five fastest growing states in the country. There are some estimates that have the population of this state doubling by 2020. I know the Action Team estimates that the Puget Sound Basin is going to go up in population by approximately thirty percent by 2020. That's eighteen years from now. Let's not be blind to the enormous stress that will put on our water supply and our beautiful, but endangered Puget Sound. We need to step up to this challenge now and we need to act to regulate stormwater pollution which is the biggest problem we have. Bigger than point sources as Sue said.

The revised permit, the Industrial Stormwater General Permit is a significant improvement over the earlier draft. It does require the industry to monitor, to take and analyze samples. I agree with Keith Johnson, I think there's going to be a real development of easy sampling products. This is absolutely critical as he said to determine whether industrial discharges are causing or contributing to violations of water quality standards.

I want to echo what Sue Jorger said about the permit system needs to be made practically enforceable. This is the area where I think further refinements are required to narrow the loop-holes. Particularly in light of what we know is under staffing at Ecology and the Fact Sheet that Ecology put out with the permit which states that "based on site inspections, no more than 25% of the industries looked could be considered to be in full compliance with BMPs," twenty-five percent. So I don't think it's realistic to assume that checking a box is going to do it. And I don't think it's realistic to expect Ecology to be out there finding out whether BMPs are being adhered to in all of these different industries. So I think as Sue said that exceptions to sampling and analyzing by using standard mixing zones should not be used unless the industries can establish that they will not damage the ecosystem. The same that they are required to establish it, if I understand this right, for the wider mixing zones.

Similarly, the compliance schedule loop-hole allowed in the new draft must be examined and tightened. The number of years that can go on with the compliance schedule does not make much sense if everybody's to be treated in an even-handed way. Again, if permittees are not required to file the changes and the updates in their pollution prevention plans, there's no way for anybody else to look to see what those changes are, whether they're adequate or what in fact is going on. So it seems to me if there is a reason for filing pollution prevention plans and everyone seems to agree there is, then the same reason applies to filing the updates and the reference that we should be able to get them under the Freedom of Information Act. The Public Disclosure Act in Washington State only applies to records held by an official agency. So if they're not submitted to the Department of Ecology, there is no way that any citizen has access to the updates. So I think it's critical that updates to the Stormwater Pollution Prevention Plans be submitted to Ecology and thereby be made available. These are only going to happen periodically. And it should not be that big a burden on the industry. When we look at the point source pollution permittees, we know that they discharge industrial process water. And we know that they've paid the costs of monitoring and reporting their discharges for years. The results of that system have been reduced discharges and enhanced compliance with water quality standards.

We must advance these procedures to address our next big challenge – stormwater runoff. We must require the same kinds of investments by the rest of the industry and industrial community and by ourselves as consumers. We simply cannot allow industry or consumers to spend away our precious water quality for free. Thank you.

Kris Holm

Now I know all about you now. Oh yes. I've been sitting in the back by that blower so I know it's hard to hear. I have a pretty strong voice, but if you can't hear me I'll shout even louder. I realize sitting through the hearing and thanking everybody from Ecology, coming to make the presentations for us, that my problem is that I know way too much about this permit. Or I thought I did. And as the presentation were being made by Keith, it occurred to me that even I still have some questions about how things were suppose to work and how they might work. And yes you want me to say my name, Kris Holm, Water Resource, _____. And I'm just kind of here making comments for myself. A little bit for the Association of Washington Business.

Anyway I think that because this permit is so complex, that the devil is in the details. And even those of us who might be the most familiar with the development of this re-issued permit, are still trying to sort through some of those. So I urge everybody to really read the permit and try to figure out, gee – When does this work? When do I need a mixing zone? When I have effluent limit. Well, when am I going to have an effluent limit?

So I just wanted to clarify a couple of things and then make some kind of general policy comments.

First of all, in talking about the requirement now under the partial stay order for, which applies to new applicants under the 2000 permit which discharge listed pollutants to 303(d) listed waterbodies. I probably already lost people with the definition with what I'm trying to discuss. The issue of discharges to listed waterbodies and the ruling that was made by the Pollution Control Hearings Board, I think needs to be a little bit better understood in contexts. This is a stay order that is only in effect until the final permit is issued. This was not a ruling by the Board on a summary judgment motion. Now I know everybody's not lawyers, but I see a couple of you out there and I'm just trying to make the point that the precedent value of ruling on a stay order is perhaps not what Ecology might think it is or other people may think it is. And I urge everybody to look at the actual wording of this stay order. I know that's online. And also more importantly perhaps is to take a look at how Ecology is implementing the stay order. Take a look at what they are requiring. Those unfortunate few who have not sought coverage under the 2000 permit before the deadline and are trying to get coverage now as industrial

dischargers. What kind of information Ecology's asking for and how they intend to enforce the stay order. I think it was important that that be said.

One of the goals that Keith stated in issuing this re-issued permit, I don't call it a new draft, re-issued permit is to have a legally defensible permit. And so some of the comments that you heard me making during the presentation I think was where I felt perhaps Ecology was waffling a little bit on whether or not, you know, the compliance schedule proposal that's in the permit is legally defensible under the Clean Water Act. Or some of the other more innovative approaches to trying to fit a stormwater discharge into a traditional NPDES permit structure when you're requiring compliance with water quality standards. I guess I'd kind of urge Ecology to think about how they're presenting that to the public, especially regarding the compliance schedule and other parts that are controversial. I know this is the draft and not the final and you're looking for comments. On the other hand, you've also put yourself out there that this is a defensible permit.

I have a couple other quick points regarding the listing issue which is one of the more controversial issues for 303(d) listed waterbodies and discharges to them. I urge everybody to take a look at how Ecology is proposing to deal with this issue. Not just for stormwater, but for other listed dis, other discharges. This is through their permit writer's manual and I'm sure there is information on-line about that as well; at least in the water quality partnership committee materials that have been posted recently by Ecology for those who are making a career out of following this issue. This is not just something that's going to apply here in stormwater industrial permits, but is general policy that Ecology is developing.

That leads me to comment on the issue of listing for sediment quality standards or based on fish tissue listings. Those with you familiar with the 303(d) list know that there are listings formed on this basis on exceedence of the narrative water quality standard for, based on fish tissue or the actual numeric sediment quality standards. Those waterbodies are listed as being limited for those parameters. I had really thought too much about it recently until the question was brought up. So how are you going to have to prove that you're not causing or contributing to a violation of or an exceedence of or whatever the language is we're using now of fish tissue criteria or sediment quality standard when it's not easily, you know you can't really say is my discharge contributing to that because there's no effluent limit that Ecology's able to set. I would, I think that's more of the response which is, because I've seen Ecology make this response in numerous other permits. We don't know how to set an effluent limit for you based on sediment standards so we're not going to. I think that response should be the same in the contexts of 303(d) listing. We don't know how to set a fish tissue standard so we're not going to set one in this stormwater permit either. Because the first thing that has to happen here is that Ecology gives you an effluent limit for the 303(d) listed criteria. How are they going to do that? You don't have to do that, they have to do that.

One of my favorite things is kicking the issue back to the agency. And one of the other issues that I know is of a concern to Association of Washington Business because nobody's really brought this up to directly, but I know a lot of you are thinking about this is cost. Cost of sampling, cost of monitoring, cost of data reporting, cost of SWPPP development, cost of compliance of putting more BMPs in. Also just the need to show that you're not doing anything that's hurting water quality standards or exceeding standards. It's not a free ticket anymore. You're going to have to do the sampling and I urge everybody to look at the details there. If you have some cost data or information specifically provide that to Ecology and the rest of us because I think that's an important part of the discussion here.

As is the issue of Endangered Species Act overlay here. Keith had me jump on him on that issue and I think that my comment then still holds which is a compliance of the permit with the Endangered Species Act or if an individual permittee with the Endangered Species Act is a very complicated issue. There's several memorandum of understandings between EPA and the agencies like NMPS, Fish and Wildlife floating around out there in which those federal agencies who we know are wiser and stronger than the

state agencies of course. I'm being factitious. In trying to figure out how NPDES permits issued by states fit into this. Generally it's true that compliance with water quality standards equals compliance with ESA. But again the devil's in the details there.

I wanted to talk about three, quickly, three big picture issues. I don't want to take up more than my time. Part of the reason that the development of any industrial stormwater discharge permit here by Ecology or any agency and part of the challenges I think EPA faced in issuing the 2000 multi-sector general permit which covers non-delegated states and I urge everybody to read that hundred and some page document is that using the NPDES program as it was envisioned under the Clean Water Act for stormwater permitting is not a good fit. The NPDES permit and the compliance scheme under the Clean Water Act and I'm thinking of things like mixing zones and compliance schedules and effluent limits and everything related to compliance with standards and how that is done in an NPDES were designed for constant flow discharges. Constant flow discharges. Stormwater, storm only. Didn't have any yesterday, have some today. How do you fit that kind of scheme into the NPDES permit? And that's a huge challenge and you can see that now talking about sampling. And how are you really going to get out there?

Well, if I have a continuous industrial discharge I know that it's fine. I'm going to invest in an automatic sampler. I know that I can do some averaging so I'm not stuck with oops one time there's a spike. I get to average. The sampling schemes here no matter how much we try to work them and I think we're trying to do that, really it's never going to fit the way it does with continuous discharges. It's just not a good fit and that's part of the reason the development of this permit is so challenging.

Similarly, effluent limits in an NPDES permit based on water quality standards are not a good way to measure whether a discharge from a stormwater facility is causing or contributing to an exceedence of a water quality standard in a waterbody. Whether it's listed under 303(d) or yet to be listed or approaching exceeding the standard, it's not a good fit again because those of us, you know, water quality criteria geeks here know that many for example the aquatic life water quality criteria are based on exposure assumptions that are long term. There are not the short term spike type of exposure you get from stormwater. So this is a problem that EPA has acknowledged.

Six years ago I went to a national conference on trying to develop national criteria for wet weather flows that really reflect actual impacts in the ambient water quality. And they don't. And that's part of the reason you see such a difficult fit here for setting effluent limits. Really being able to show you that there's a potential to cause or contribute to flows. And that _____ by the fact the sampling is a grab sample. Yet, if you look at the effluent limits being set for TMDL listed waterbodies, it's what? medium average, is that it? medium average? I mean how are you going to average a grab sample that you're taking once a month?

So there's a whole lot of problems, things that don't fit in here. But you're forced into a legal construct of the permit which requires strict compliance at point of discharge for effluent limits for listed waterbodies. I'm not offering a whole lot of solutions here. I'm saving those for the paying clients, right Keith? This is part of the challenge here and I really urge everybody to look at this in that context. Look at some of the stuff EPA has written on the Multi-sector General Permit preamble. They address a lot of these issues. They don't have answer either. But I think it's important to understand them when you're looking at this permit.

One of the other final things I'm going to talk about quickly is the challenge, kind of the poor downstream discharge point. When you're downstream from outside sources that you have no control over whether it's air deposition or off-site flow onto your property and you happen to be the guy with the discharge point and with the requirement to be in compliance with the industrial general permit. We've got to look at some ways with Ecology, with EPA of now that liabilities are becoming much more strict, BMPs are more costly and expensive, compliance is more costly and expensive, costly and expensive? costly and time-consuming that splitting off liability for those outside source contributions.

Again, I don't have any great solutions but I think this is something we need to be working on with all dischargers who are facing these challenges. Thank you for listening to all that. Thanks.

Lindsey Unruh

I just have a quick comment. I would like to see, having it looked into for better guidelines for sampling when you have retention facility or retention pond, or a settling pond, if during the rain you may not actually even have discharge – so I would just like to see – I need some guidelines on this. That's all I got. Thank you.

Lynn Scott

My name is Lynn Scott. _____. I'm not a recent newcomer. I've been here for ten years. And I'm very concerned about Ecology and water especially which is the reason that I'm a volunteer for Puget Sound Keeper Alliance. I've just started in the last couple of months volunteering and I've learned a lot as I have here today. I don't know the language. I haven't read a lot of your papers. But I think it's a basic right to have safe water for everyone. As simplistic as it sounds, I don't think we should have to worry about our water. I don't think that levels should be made that people can just, it's okay if they just kind of squeak under it and if they have a storm and the peak goes up well, it was a storm. It should all be under that level. People shouldn't have to be afraid of going in the water after a storm.

The fish pollution is really scary. I moved from a place right along the Hudson River where we couldn't eat any fish. I would hate to see Puget Sound getting to that point. From various things I've heard, we're getting there. I'm going to keep learning as much as I can. Thank you for letting me speak.

Mark Forcum

Okay, my name Mark Forcum, represent U-Pull-It A/W Auto Wrecking. _____. Some of my comments and concerns are I don't have a problem with the stormwater permit processes. I would encourage Ecology to be more proactive and work on the best management practices end as opposed to the paperwork end. For a small business owner/employer, we are probably the only auto recycler in Southwest Washington that even has a stormwater permit. I would like to see the playing field get leveled out and get changed, and every recycler that doesn't have a permit and that process that Ecology is going about that to check out other recyclers.

In my particular industry the general public is probably my biggest competitor. I have to compete against them, to buy cars, to buy salvage, and why different government agencies are allowing and encouraging from tow companies, local bureaucracies to encourage that public option to sell salvage vehicles that can only processed under what are considered best management practices, but the general public doesn't have the expertise, qualifications, and skills to process vehicles efficiently to manage the waste antifreeze, batteries, and tires, that we have the technology and skill to do.

We are a small time operation as far we got nine employees at our location – you know we do best management practice, we process every vehicle, we drain the fluids out of every car, we pull the oil filters, drain the antifreeze, recycle the batteries. All of catch basins we have – what we put in places is what is called a drain diaper system, so we contract out to have a company in our parking lots put in storm diapers to just to handle the fluids that come off the customers cars and I have been doing water samplings for about four years at my site. I also own 5 other locations in Portland, so I have been kind of use to that process over there. I can tell you that with my sampling the stormwater that comes out of our yard is probably cleaner that what comes out of the parking lot here. I know it is cleaner than what comes off my parking lot.

I would like to see the communication coordination between and Ecology and local planning commissions, bureaucracies involved. We have been trying to build a new building which we finally given up and I'll just probably just move and get a new location and to try and figure out how I can best handle what we want to do and – you know have everybody understand what the rules are. There seems to be total confusion.

When I first submitted my 1200-Z, in 1998 I believe it was or 1997, I got it back because they didn't feel that I needed one. Which is kind of frustrating - to try and figure out what is going on. If you guys don't know what's going how I'm suppose to know what's going on. (Hearing Office question: May I ask for clarification what 1200-Z is?). That might not be what your terminology is. A 1200 – Z is an individual stormwater permit. (Member of audience responded that 1200 – Z is what Oregon calls their individual stormwater permit). I didn't want to fall under – I didn't want to group myself with a bunch of other auto recyclers or industries - because I don't practice the same way and I don't want to be held under the same stereotypical image as the rest of the auto recycling industry. I'm not here to represent any other auto recycler- I am here to represent myself. I guess that's why I would like to see you guys plan to level out the playing field. Why if you run down the phone book today - which I don't know how Ecology does any monitoring – if you run down the phone book today and looked at ever other auto recyclers here in Vancouver or Southeast Washington it wouldn't take you long to find out where the problem would or wouldn't be. And – you know – in a nutshell, it's just frustration.

I was involved with others in a deal where we contacted to have our antifreeze processed by a company up in Olympia, and the company went up-side down and we had go in and retrieve our product and Department of Ecology was directly responsible for supervising that facility and in my mind it was very disturbing that I'm still potentially liable for a couple of million dollars in cleanup costs on a facility that is under your guys watch group. So it bothers me to have you guys to tell me that – you are going to throw some more rules on, if you can't even mind what's going with someone that is supposed to be a licensed recycler, but handles gas, and oil and antifreeze to let something like that get out of hand for those guys to go out of business it's disappointing. That would be my comments.

Pat Pearson

My name is Pat Pearson. I am here representing Puget Sound Keeper Alliance. _____. I have been a pollution prevention director at PSA for the last eight years. And in that capacity most of my time is spent working with businesses and industries in a positive way with pollution prevention and control. During that time I have been involved in the process of a boatyard permit and the re-issuance of the boatyard permit. Which as I've been listening is becoming clear to me that has more connection here then I first would have thought.

That original permit it does do grab samples, but what they found (Do you think we still got power on this?) time to leave. When we did work and do a re-issuance of that permit and change it we actually increased the number of samples that were taken on stormwater because we found that we couldn't get enough accurate data from only doing it twice a year and that a quarterly sampling was a much better approach. So I really commend Ecology for getting a monitoring requirement, a sampling requirement into this permit. And having it being a quarterly so that I think that there's a chance that we'll get enough accurate data to make some good decisions as we move forward on this in time.

The other thing that I would really like to see is that we get the stormwater pollution prevention plans actually submitted by the businesses. My experience has been that businesses, you know, they're trying to run a business, they're trying to make money, they're extremely busy, sometimes the intent is good and the follow through isn't there. Just like it is with any of us that have got too many things to do. And I don't think it's Ecology's plan and it's certainly not Puget Sound Keeper Alliance plan that what we're after is to try and catch anybody at anything. I mean what we'd like to do is have plans in place that protect the water. We don't have to go and try and catch somebody doing something wrong. I

think the most efficient way to make sure those plans get written is that they, to make sure they need to be submitted. Because I think it's easy to have them fall through the cracks. And then later you have people, businesses scrambling to get this done because they think somebody is looking over their shoulder all of a sudden. It's much better. You're going to get a much better plan if they know it's their responsibility to do it and to submit it. And that it then would be on file. I think it even puts Ecology within the permit.

We listen to how someone's suppose to be identified and in charge as far as pollution prevention goes on site. Sometimes what helps is to actually support that person in their job. And if they have a requirement to do a plan and submit it, they get support within that business to complete that task. Instead of being drawn off to do other things. So I just think it's much better in the long run and it's much better for the business and they're better protected and our water is better protected. So I'd like to see that change in the permit.

I would strongly do whatever we can to see if we can't increase funding to Ecology to make sure that they have the capabilities to help oversee this monitoring and also make sure the plans get submitted. And I feel strongly that there does need to be an actual determination by Ecology to allow for the no mixing zones and no exposure. That is not something that should happen by default, by simply checking a box and then not hearing anything. I think that our lives are way too complicated for that to be the system that we are going to rely on. I think that just about does it. I tried to be brief. Thank you.

Sean Callahan

I was hoping that I didn't have to look in front of everybody and face the back. My name is Sean Callahan. _____. I represent myself or private citizen. And I have a few comments on the industrial stormwater permit – about six or seven points. I'll make them pretty quick here.

First one, how does Ecology expect to protect water quality when the Department is giving industrial stormwater permittees an automatic 300 foot mixing zone with the ability to expand the mixing zone? Subsection 6 of the WAC 173-201A-100 requires that the size of the mixing zone be minimized and minimized is the keyword here. I may suggest through this hearing providing a little bit of balance between environmental and business concerns, may be we could make that mixing zone 100 feet.

Next issue is the five-year blanket exclusion for facilities, no exposure certification, excuse me. I feel the Department should require facilities to notify Ecology at least every six months to a year with some sort of certification, may be, perhaps, a report or check off box which has the signature of the CEO, owner, or chief financial officer. I think it's very important that these facilities are, or congenially remind themselves that they have a certification. They have to adhere to the no exposure clause within the permit. Also I would like to see language in the permit in the no exposure section that includes something about proper cover and containment of all liquid products and wastes.

Next issue, I have and I'll quote these _____ sections, it's Section S9, #5B, all facilities should comply with future additions of the Puget Sound Stormwater Manual. Actually that's my verbiage. I feel that there should not be a "grandfather clause" for existing facilities. Many times, a gentleman previously mentioned, that industrial activities change, situations change, and we need to keep the SWPPP up-to-date with that. Also I would like to see on Page 34 the permit, excuse me, I'm sorry that was Page 30 where it talks about compliance with standards, Special Condition 7, Section C, stormwater treatment system that does not fully function during storm that exceeds the water quality design will not be a permit violation. I would appreciate it if that last sentence could be removed from the permit. That would severely restrict Ecology's ability to enforce on facilities that aren't applying proper BMPs and AKART. I don't want that to be a get out of jail free card essentially. And I think that's about it. Thanks for your time.

Sue Joerger

Hi. I'm Sue Joerger. I'm the first victim. I'm the Puget Sound Keeper with the Puget Sound Keeper Alliance _____.

The mission of the Puget Sound Keeper Alliance is to protect and to preserve Puget Sound. And we do this in a number of ways. In the interest of time, I'll just cut to the chase. We were involved in the appeal of the Industrial Stormwater Permit and have been interested in stormwater pollution fairly recently I think as Keith had pointed out. It's one of the largest sources of pollution in Puget Sound. Now actually it's surpassing industrial point source pollution.

We appealed the permit and believe this new permit has taken a substantial step forward. The permit now requires compliance with water quality standards. It's no longer the ultimate goal. It is compliance with water quality standards is required.

We also support the new monitoring and reporting requirements. This takes a significant step forward. It's going to provide us with a significant amount data that will allow us to in the next round of permitting, in 2007 I believe move forward with whether we will need effluent limits, what other kinds of requirements we might need, whether we'll be able to determine whether best management practices are actually working to protect water quality.

We also think there are some serious flaws in the permit based on the review by our attorney concerning mixing zones, discharging to 303(d) waters, implementation of which version of the Stormwater Manual, and the no exposure rule.

So I'm just going to go through those really quickly what our belief is. We think even though the permit has required, requires compliance with water quality standards some of these - the compliances actually diluted through several ways.

First is you can get basically a mixing zone by checking a box and certifying that you've done AKART (all known and available and reasonable methods of treatment) and that you're also certifying that you're protecting beneficial uses. Once you've done that you get a permit. And there's no way for the public to review this mixing zone determination if you're giving a standard mixing zone. They're also automatically approved by the Department of Ecology unless, well they're automatically unless you hear from the Department of Ecology. And we believe that the law requires the Department of Ecology to make a determination before granting a mixing zone. I think, obviously, this is a significant challenge to assume that for the Department of Ecology to ensure through this process that actually permittees are meeting AKART. We feel that the burden of proof should be on the permittee. That they should be able to prove that they are doing all known and available and reasonable methods of treatment, AKART, before getting this mixing zone.

Second, we believe the compliance with water quality standards is diluted in 303(d) listed waters. The permit requires that you meet water quality standards for pollutants of concern. That they may _____ at the point of discharge. But if a facility can't meet this, then they're allowed up to five year compliance schedule and are relieved of the effluent limit and we believe this is actually illegal. Do not think it should be in the permit.

We're also concerned about the design criteria, compliance with – the limitation of compliance if your design criteria are on the stormwater treatment system are exceeded by the six month/20 hour storm. We don't believe that compliance with water quality standards is excused for storm events.

Another issue is that the draft permit does not require all permittees to implement AKART because those with existing plans can use the old stormwater manual. That was approved, I believe, back in 1992. Not the new one which was approved in 2001. We think this is a significant challenge. Also there is no requirement that, even though SWPPPs, the Stormwater Pollution Prevention Plans can now

be submit, will now be kept on file at the Department of Ecology, there's no requirement that they be updated and available. Since they're not required to be updated, there's no way that I as a member of the public can go into the Department of Ecology's Records Office and review these without making a public disclosure request. There's also no requirement for the inspection reports to be submitted. Monitoring reports, yes, should be submitted. But the inspection reports as I understand are not required to be submitted. So we're going to be looking at this information and we will be interested in obtaining copies of the current SWPPPs. So we would rather have them submitted as they're updated to the Department of Ecology so we can review them without having to go through a public disclosure request process.

Finally, the Department of Ecology is going to allow facilities with no exposure to claim this, without an Ecology determination as in the mixing zone area. And again we feel that the burden of proof should be on the permittee and that they shouldn't get an automatic no exposure certification without some kind of Department of Ecology determination. With that, I think that's it for now. Thank you.

Tom Putnam

Thank you. My name is Tom Putnam. _____ I am a private citizen who uses Puget Sound for fishing, swimming, boating, clamming, kayaking, sailing, camping, and a number of other uses. And I am also board member of the Puget Sound Alliance and I'd like to speak on behalf of our hundreds of members who use the Sound in many of the same ways. Finally, I'm the environmental representative on the Puget Sound Council which advises the Puget Sound Action Team which is the ten or so agencies that make management decisions regarding water quality in Puget Sound.

We live in a place of great beauty and environmental diversity and natural abundance. Almost since arriving here, however, we have used the natural environment as a dumping ground for industrial processes. And immense damage to our natural resources is the result.

We all know PCB levels in Puget Sound Orcas. I think we were all stunned to hear recently that the transient Orca that was sampled, the one that died up near Port Angeles, has the highest levels of PCB ever recorded in a marine mammal in this area and perhaps in the world. Overall our Puget Sound Orcas are extremely contaminated with toxic chemicals.

We've seen plummeting populations of herring, of ground fish, certain species of salmon. In Elliot Bay, studies have shown serious liver lesions and increasing liver lesions and liver cancers in English Sole. And these are thought to be a result of polyaromatic hydrocarbons which are largely a bi-product of burning petroleum elements and come in from stormwater and from air deposition from smog, but largely through washing off the surfaces in our land and in our environment.

I mentioned the Puget Sound Management Plan which is written to give guidance to agencies in the Puget Sound which have practices that affect water quality. Both the Environmental Protection Agency and the Department of Ecology have adopted this as a guiding document as planned. The goal of the stormwater program of the plan is to achieve standards of both water and sediment quality by managing stormwater runoff and reducing combined sewer overflows.

We do commend aspects of the Department of Ecology's revised permit. It now requires permittees to meet water quality standards and also includes certain monitoring requirements that can only help us to begin to characterize and reduce stormwater pollution. I strongly support the new monitoring and reporting requirements which will help us characterize the pollutants found in stormwater and pave the way for the next permit to actually limit the discharge of these pollutants into Puget Sound. Monitoring also assists municipal jurisdictions in monitoring and tracking pollutants to their sources and helping to eliminate those. As a consumer I'm willing to support the additional costs of monitoring and reporting for stormwater discharge that might be passed on to me by industrial permittees covered under the

permit. And I also very much would like emphasize that I support increased funding to the Department of Ecology to provide the technical assistance needed to help stormwater permittees learn how to monitor and report their stormwater discharges in the most efficient and economical manner.

I also support legal arguments of the Puget Sound Keeper Alliance which concluded the permit still does not go far enough to protect water quality or comply with the Clean Water Act. And I support their efforts to take these compliance loop-holes out of the permit. Specifically, to cite one specific example, the compliance schedules are pretty much open-ended. I understand that they, compliance schedules will run to the end of the permit, but we feel this should be specific deadlines in compliance schedules to achieve water quality standards. Also for AKART application, the same thing goes. We need deadlines. The goal of the Clean Water Act to achieve progress in these areas and we can't have that if there's open-ended permits to pollute.

Finally, I also agreed that the burden of proof for compliance with the requirements of the permit for mixing zones or no exposure should be on the permittees and not the Department of Ecology or citizens monitoring permit compliance. I believe that a permittee should not receive no exposure exception unless they can prove that rainwater falling on their property is not exposed to potential contaminants and they've used all known available and reasonable methods of treatment to avoid the use of a mixing zone or that Ecology makes the determination that this so.

I'd also like to mention that we called, I think, 150, 160 of our members asking them if they could testify at this hearing or make comments. Everyone of them said they couldn't come because it was during the day and they work during the day. I'd like to request that at least one of the hearings or some of the hearings be held in the evening so that other citizens can also attend and testify.

The eminent Puget Sound oceanographer, Curtis Ebsmar, has described non-point pollution in Puget Sound as the results of the kind of marine smog. The insidious encroachment of many small amounts of chemicals into our marine environment was gradual, but eventually serious effects. We believe that all of our stormwater permits, and this will include municipal and construction down the road, must meet minimal standards of complying with water quality standards and monitoring to assist collection by monitoring stormwater discharges so that we can characterize and systematically remove sources of pollution from our waters.

Again, this is the goal of the Clean Water Act and we were suppose to have fishable, swimmable waters meeting water quality standards by the year 1985. We're late. Finally, the Department of Ecology must be given the resources to do an effective job. Citizens of Washington have repeatably stressed their desire for strong environmental protection, yet the budget of the Department of Ecology is repeatable slashed, staff is cut. We must give Ecology the resource to do its job. And it's for all of our benefit. Thank you very much.

William Riley

William Riley, Surface and Stormwater Manager for the City of Bellingham,_____. I would like to go on record as stating that the administration of this permit and program should be adequately funded by the state that it will not be a burden to local governments. Local governments should be notified by the information on all permittees within its jurisdiction.